

# EXHIBIT 1

# EXHIBIT 1

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

IN RE:

CASH CLOUD INC.,  
dba COIN CLOUD,

Debtor.

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)  
) CASE NO.:  
) BK-23-10423-MKN  
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DEPOSITION OF DEBTOR CASH CLOUD INC., DBA COIN CLOUD,  
PURSUANT TO FRCP 30(B)(6)

DANIEL MOSES

Taken on Wednesday, August 23, 2023

At 10:00 a.m.

By a Certified Court Reporter

At 1731 Village Center Circle, Suite 150

Las Vegas, Nevada

Reported By: Karen L. Jones, CCR NO. 694  
Job No.: 54262 Firm No. 116F

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1 P R O C E E D I N G S

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3 Whereupon --

4 (In an off-the-record discussion held prior  
5 to the commencement of the proceedings, counsel  
6 agreed to waive the court reporter's requirements  
7 under Rule 30(b)(5)(A) and 30(b)(5)(C) of the  
8 Nevada Rules of Civil Procedure.)

9 DANIEL MOSES,  
10 having been first duly sworn to testify to the  
11 truth, the whole truth, and nothing but the truth,  
12 was examined and testified as follows:

13

14 EXAMINATION

15 BY MR. KISSNER:

16 Q. Good morning.

17 A. Good morning.

18 Dawn just joined, in case that's  
19 helpful.

20 Q. Oh, Dawn Cica?

21 A. Yes.

22 Q. Okay. That's --

23 A. Chris's --

24 Q. -- Chris's lawyer.

25 So my name is Andrew Kissner. I'm with



1 Morrison Foerster. I represent Enigma Securities  
2 Limited and I'm going to ask you a few questions  
3 today about Cash Cloud, Inc., which hopefully you'll  
4 understand me when I refer to it as "Coin Cloud" or  
5 "the debtor," right?

6 A. Understood. It's called many things.

7 MR. MANN: Can we stipulate to  
8 objections?

9 MR. KISSNER: Yeah. Certainly. And as  
10 with before, one stipulate -- for the record, all  
11 objections other than to form of the question are  
12 preserved and not waived.

13 MR. MANN: Thank you.

14 MR. KISSNER: Was there anything else?

15 MR. MANN: No.

16 BY MR. KISSNER:

17 Q. Could you please state your name for the  
18 record?

19 A. Daniel Moses.

20 Q. And have we ever met before?

21 A. Not in person.

22 Q. We've spoken over a Zoom videoconference  
23 call?

24 A. Correct.

25 Q. And have you ever been deposed before?

1 A. No.

2 Q. You haven't?

3 A. (Shakes head in the negative.)

4 Q. Okay. Welcome.

5 And how are you feeling today?

6 A. I feel great. Thank you.

7 Q. Good.

8 Sleep okay?

9 A. (Nods head in the affirmative.)

10 Q. All right. Is there any reason -- and  
11 we'll get to that in a second, but is there any  
12 reason that you don't think you can give full and  
13 complete testimony today?

14 A. I will give testimony to the best of my  
15 knowledge.

16 Q. Okay. And, sorry if this is personal or  
17 prying, but are you on any drugs or medication that  
18 might affect your ability to recall things?

19 A. I am on no medication at this time.

20 Q. So obviously, we're here. You see the  
21 court reporter who's going to be taking down  
22 everything we say. So there's a couple differences  
23 between sort of normal conversation and how a  
24 deposition goes that might seem unnatural, but  
25 they're sort of key to making sure that we have a

1 clear and concise record, which will also make sure  
2 that you don't have to come back here.

3 The first thing is, please provide a  
4 clear verbal answer as opposed to a nod or a  
5 "uh-huh" or a "huh-uh" because those don't show up  
6 very well on the record.

7 A. Understood.

8 Q. I know that in normal conversation, you  
9 know, oftentimes we have a sense of the question  
10 being asked, we know what's going to be said, and so  
11 we start talking before, you know, the -- before the  
12 question is over, which is normally fine but in a  
13 deposition, again, just because we have the court  
14 reporter here, even if you know what I'm going to  
15 say, I just ask that you wait for me to finish  
16 before answering.

17 A. Understood.

18 Q. And then if you don't understand a  
19 question, that's fine, but please just ask me and  
20 I'll do my best to rephrase it. Conversely if you  
21 do answer a question, then I'm going to assume that  
22 you understood it, fair?

23 A. Understood.

24 Q. And then you might hear objections from  
25 your counsel from time to time which is fine.

1 Certain objections, he has to raise in order to  
2 preserve them. But unless he instructs you not to  
3 answer, you should still answer a question even if  
4 there's been an objection raised.

5 A. Understood.

6 Q. And then we'll take periodic breaks  
7 throughout the deposition, including one in about,  
8 you know, an hour and change. But please let me  
9 know if at any point you feel like you need to take  
10 a break, you know, collect your thoughts, go to the  
11 restroom, whatever. That's totally fine. The only  
12 thing that I ask is that if there's a question  
13 pending that you answer the question before we take  
14 a break.

15 A. Understood.

16 Q. Okay. So with that out of the way,  
17 let's just talk a little bit about you and your  
18 background before we get to this pile of documents  
19 here.

20 So could you tell me who your current  
21 employer is?

22 A. I'm employed by Province, LLC.

23 Q. And what's your current position at  
24 Province?

25 A. I'm a principal and I'm head of

1 institutional creditor advisory.

2 Q. And what are some of your roles and  
3 responsibility as principal and -- I'm sorry -- head  
4 of institutional creditor advisory?

5 A. I represent debtors. I represent  
6 lenders. I represent independent directors and  
7 provide general investment banking and financial  
8 consultancy knowledge base for them.

9 Q. And what are some of the maybe  
10 day-to-day tasks that you do in that capacity?

11 A. I generally help oversee teams of people  
12 who work on providing information that is needed for  
13 each particular assignment in the financial aspects  
14 of the case.

15 Q. Would you say that you specialize in a  
16 particular area, be that an industry vertical or,  
17 you know, a sector of investment banking or  
18 financial advisory?

19 A. No.

20 Q. No? Okay.

21 So you wouldn't say that you only do  
22 corporate restructuring, for example?

23 A. I do not do personal bankruptcy.

24 Q. Okay. But do you do other types of  
25 financial advisory work outside of the context of

1 restructuring?

2 A. We, from time to time, have engagements  
3 in nonrestructuring-related advisory work on a  
4 consultancy basis.

5 Q. But would it be fair to say that the  
6 bulk of your work somehow touches distress or  
7 restructuring; is that fair?

8 A. Yes. There's a large amount of my work  
9 that encompasses distressed.

10 Q. And among the sort of seats at the  
11 table, would you say that you spend most of your  
12 time representing borrowers, debtors, creditors or  
13 an even mix?

14 A. An even mix.

15 Q. Even mix. Okay.

16 And when you're retained to, say,  
17 represent a debtor, is it usually as a financial  
18 advisor? As a CRO? As an investment banker?

19 MR. MANN: Objection to form.

20 THE WITNESS: Province is a financial  
21 advisory firm, so it's generally in that capacity.

22 BY MR. KISSNER:

23 Q. Okay. And how long have you been a  
24 principal and head of -- institutional credit, was  
25 it?

1           A.       I've been there about -- I think it's  
2       about -- shouldn't be the tough question. I think  
3       it's like three and a half years.

4           Q.       Three and a half years?  
5                   And before that, where were you  
6       employed?

7           A.       How far back would you like to go?

8           Q.       Immediately before you were a principal  
9       at Province.

10          A.       I ran my own firm called Pacific Creek  
11       Capital for about eight years.

12          Q.       What was your role there?

13          A.       I was owner and principal.

14          Q.       And what did Pacific Creek do?

15          A.       Pacific Creek was an investment firm  
16       investing in distressed assets.

17          Q.       Would it be fair to call it a hedge  
18       fund?

19          A.       No.

20          Q.       Okay.

21          A.       "Investment management" is a better  
22       word.

23          Q.       Investment management.

24                   Was it investments -- sorry. Strike  
25       that.

1 Was it, you know, proprietary  
2 investments or was it managing investments on behalf  
3 of clients?

4 A. It was both.

5 Q. It was both. Okay.

6 And how long were you there? Did you  
7 say eight years?

8 A. Eight years.

9 Q. Eight years. Okay.

10 And before that?

11 MR. MANN: Objection to form.

12 THE WITNESS: Before that I was at a  
13 firm called Partners Fund in San Francisco.

14 BY MR. KISSNER:

15 Q. And what did Partners Fund do?

16 A. They were a long-short equity fund.

17 Q. So closer to a hedge fund?

18 A. Yes. They were a hedge fund.

19 Q. What was your title there?

20 A. Managing director.

21 Q. And your roles and responsibilities as  
22 managing director?

23 A. I was responsible for helping invest  
24 their credit portfolio.

25 Q. And did you guys have a particular --



1 you said long-short?

2 A. On the equity side.

3 Q. On the equity side. Okay.

4 So performing investments or?

5 A. For the credit side.

6 Q. Did you -- sorry. Strike that.

7 Did you also do credit work or only

8 equities?

9 A. I did only credit or 90 percent credit.

10 Q. Oh, 90 percent credit. Okay. So

11 long-short on the equity side.

12 And then what was the credit strategy?

13 MR. MANN: Objection to form.

14 THE WITNESS: They had a -- they had a

15 carve-out to invest in credit.

16 BY MR. KISSNER:

17 Q. Performing credit? Distressed credit?

18 A. All types of credit.

19 Q. Why did you leave Pacific Creek?

20 A. It was just time.

21 Q. It was just time?

22 A. Uh-huh.

23 Q. Okay. Is Pacific Creek still in

24 operation?

25 A. No.

1 Q. How did Pacific Creek do?

2 MR. MANN: Objection to form.

3 THE WITNESS: I had a very successful  
4 business.

5 BY MR. KISSNER:

6 Q. Okay. Do you miss it?

7 MR. MANN: Objection to form.

8 THE WITNESS: I'm very happy at where  
9 I'm employed at the moment.

10 BY MR. KISSNER:

11 Q. Okay. So you said that Province, they  
12 do some investment banking work, but primarily  
13 financial advisory; is that fair?

14 MR. MANN: Objection to form.

15 THE WITNESS: Province is known as a  
16 crossover firm so they do both financial advisory  
17 and investment banking work.

18 BY MR. KISSNER:

19 Q. Okay. And we'll talk about Coin Cloud  
20 in a minute.

21 In the past have you ever run a sales  
22 and marketing process for a debtor's assets in  
23 Chapter 11?

24 A. Not as a debtor advisor, no.

25 Q. Have you ever run a sales and marketing

1 process for a debtor's assets in Chapter 11 other  
2 than as a debtor advisor?

3 A. No.

4 Q. No, okay.

5 And I apologize in advance. For some  
6 reason when this binder got printed, the notice of  
7 deposition was all the way at the back. So I'm  
8 going to ask you to turn to Tab 48 and maybe just  
9 for ease you can pop it out and put it at the front,  
10 but I leave that to you.

11 MR. KISSNER: And I'll ask that this be  
12 marked as Exhibit 1.

13 (Exhibit 1 marked.)

14 MR. MANN: What tab number was that  
15 again?

16 MR. KISSNER: It was 48.

17 THE WITNESS: 48?

18 MR. KISSNER: Yeah.

19 BY MR. KISSNER:

20 Q. All right. Do you recognize this  
21 document?

22 A. I don't recall this document.

23 Q. Do you mind reviewing it for a second?

24 A. Sure.

25 Q. Can you tell me what it appears to be?

1 A. Topics for examination.

2 Q. Do you understand that you're appearing  
3 here today pursuant to this Exhibit 1?

4 A. I do.

5 Q. Okay. But you haven't reviewed it  
6 before?

7 A. I've reviewed a summary form of it.

8 Q. Could you please turn to page 2 of  
9 Exhibit 1?

10 A. Absolutely.

11 Q. Okay. So do you see that there's a  
12 number of topics listed here?

13 A. I do.

14 Q. Okay. And do you understand that you're  
15 here to testify as a representative of the debtor  
16 regarding certain of these topics?

17 A. I do.

18 Q. Okay. And do you understand that your  
19 testimony on these topics, it's binding on the  
20 debtor?

21 A. I understand.

22 Q. And then you understand that as the  
23 debtor's representative you're required to testify  
24 regarding information that is known or reasonably  
25 knowable or reasonably available to the debtor

1 regarding these topics, correct?

2 A. Understood.

3 Q. Okay. Could you turn your attention to  
4 topic six and read that?

5 A. "The sales and marketing process for the  
6 sale of substantially of all of Coin Cloud's  
7 assets."

8 Q. And are you prepared to testify about  
9 this topic today?

10 A. I am.

11 Q. Okay. And could you read topic seven?

12 A. "The conduct of the auction conducted on  
13 June 2nd, 2023, for Coin Cloud's assets."

14 Q. And are you prepared to testify on  
15 behalf of the debtor on topic seven today?

16 A. I am.

17 Q. Okay. And then could you read topic  
18 eight, please?

19 A. "Any analysis, evaluation or assessment  
20 of the digital currency machines sold to Heller  
21 Capital."

22 Q. And are you prepared to testify on  
23 behalf of the debtor with respect to topic eight  
24 today?

25 A. Yes.

1 Q. Do you have personal knowledge about  
2 each of these topics?

3 A. I have knowledge about each of these  
4 topics.

5 Q. You said you have knowledge of about  
6 each of these topics.

7 Do you have personal knowledge about  
8 each of these topics?

9 A. I don't understand the difference.

10 Q. Do you -- fair.

11 Do you have knowledge based off of your  
12 personal recollections or interactions with respect  
13 to the subject of these topics?

14 A. Yes.

15 Q. Okay. And in preparing to testify today  
16 as a representative of the debtor, did you  
17 supplement that personal knowledge in any way?

18 A. To prepare for the deposition, I looked  
19 at the DIP documents again, I looked at the APA  
20 again, I looked at the Province invoices again.

21 Q. Anything else?

22 A. And I looked at the bid procedure  
23 document again.

24 Q. And did those documents help you refresh  
25 your recollection of certain matters?

1 A. It did.

2 Q. Okay. And did you have discussions with  
3 anybody at the debtor to prepare for today's  
4 testimony?

5 MR. MANN: Objection to form.

6 MR. KISSNER: I'll strike that.

7 BY MR. KISSNER:

8 Q. Did you have discussions with any  
9 employees of the debtor in preparation for today's  
10 testimony?

11 A. No.

12 Q. No.

13 Did you have discussions with anybody  
14 else at Province in preparation for today's  
15 testimony?

16 A. Yes.

17 Q. Who did you speak with?

18 A. Paul Huygens, Tanner James.

19 Q. What did you guys talk about?

20 MR. MANN: Objection to form.

21 THE WITNESS: Conduct and form.

22 BY MR. KISSNER:

23 Q. And did you have any discussions with  
24 anybody representing or relating to the creditors'  
25 committee preparing for today?

1 A. I did not.

2 Q. And just to be clear, when I say  
3 "creditors' committee" you'll understand me to refer  
4 to the Official Committee of Unsecured Creditors of  
5 Cash Cloud, Inc.?

6 A. I understand.

7 Q. So other than talking to employees at  
8 Province, did you have discussions with anybody else  
9 in preparation for this testimony?

10 MR. MANN: Objection to form.

11 THE WITNESS: My -- our counsel, co --  
12 Fox Rothschild.

13 BY MR. KISSNER:

14 Q. How long would you say you spent in  
15 total preparing for today's testimony?

16 A. I'd say a couple hours.

17 Q. A couple hours?

18 A. (Nods head in the affirmative.)

19 Q. Let's talk a little bit about the  
20 retention of Province by the debtor, okay?

21 When were you retained?

22 A. January -- my recollection is  
23 January 2023.

24 Q. Okay. And do you recall what the scope  
25 of your retention was?



1 A. Financial advisor for the debtor.

2 Q. Were you also retained to be an  
3 investment banker for the debtor?

4 A. We were retained to all services from  
5 financial advisory through investment banking.

6 Q. How would you describe those services?

7 MR. MANN: Objection to form.

8 THE WITNESS: We -- you know, as a  
9 financial advisor, we would go in, analyze the  
10 company, work with management and try to help figure  
11 out the best way for reorganization of that company.  
12 BY MR. KISSNER:

13 Q. Okay. And that description is of  
14 financial advisory services or --

15 A. It's both.

16 Q. What would you say the difference  
17 between an investment banker and a financial advisor  
18 is?

19 MR. MANN: Objection to form.

20 THE WITNESS: I don't think there's any  
21 difference.

22 BY MR. KISSNER:

23 Q. You don't think there's any difference?

24 A. Not much.

25 Q. You've been --

1 A. They --

2 Q. Sorry, go ahead.

3 A. They have different tasks but, you know,  
4 they're all generally studying financial knowledge  
5 of a company.

6 Q. How do you think the tasks differ  
7 between a financial advisor and an investment  
8 banker?

9 MR. MANN: Objection to form.

10 THE WITNESS: A financial advisor really  
11 digs deeply into the operations of the company and  
12 puts together everything from 13-week cash flows to  
13 budgets and really goes through the financials of  
14 the company on a daily basis.

15 An investment banker is working on  
16 strategy, working with those same financial analyses  
17 to figure out what the best course of action,  
18 whether it be just a straight reorganization or a  
19 sale or whatever is the best way to go in order to  
20 maximize value for all creditors.

21 BY MR. KISSNER:

22 Q. Now, at Province are there different  
23 teams that specialize in -- strike that.

24 At Province are there different  
25 investment banking and financial advisory teams?

1 A. No.

2 Q. No.

3 Who else worked with you at Province on  
4 this retention -- or on this engagement, rather?

5 MR. MANN: Objection.

6 THE WITNESS: Paul Huygens who was  
7 founder of the firm and, I guess, key principal,  
8 Tanner James and Spencer Stires.

9 BY MR. KISSNER:

10 Q. Now, Mr. Huygens, would you say that he  
11 specializes in a particular area of practice?

12 MR. MANN: Objection to form.

13 THE WITNESS: We all work on many  
14 different engagements.

15 BY MR. KISSNER:

16 Q. Would you consider him an investment  
17 banker?

18 MR. MANN: Objection to form.

19 THE WITNESS: I consider everybody in  
20 the firm can act as a financial advisor or an  
21 investment banker or both.

22 BY MR. KISSNER:

23 Q. And Mr. James, would you consider him a  
24 expert in investment banking or financial advisory  
25 work?

1 MR. MANN: Objection to form.

2 THE WITNESS: Everybody has the same  
3 tasks where they work on both.

4 BY MR. KISSNER:

5 Q. Same question for -- Mr. Stires, is it?

6 A. Yes.

7 MR. MANN: Objection to form.

8 THE WITNESS: Yes.

9 We are a crossover firm.

10 BY MR. KISSNER:

11 Q. Do you recall what your fees -- what  
12 your fee arrangement was in this case?

13 A. I do.

14 Q. Can you describe it?

15 A. We are -- we were employed as an  
16 hourly -- on an hourly rate with a success fee of  
17 certain of the sale of the assets.

18 Q. So would it be fair to say that a  
19 portion of your fees are contingent?

20 A. Yes.

21 Q. And they're contingent upon a successful  
22 transaction?

23 A. Correct.

24 Q. Would it be fair to say that your fees  
25 are higher if the amount received by the company is

1 higher and lower if the amount received by the  
2 company is lower?

3 MR. MANN: Objection to form.

4 THE WITNESS: For a portion.

5 BY MR. KISSNER:

6 Q. For a portion.

7 A. Uh-huh.

8 Q. Could you describe what you mean by  
9 that?

10 A. The majority of our work is done on an  
11 hourly basis.

12 Q. Did your fees -- strike that.

13 Did the amount of your fees depend on  
14 the form in which a transaction took?

15 MR. MANN: Objection to form.

16 THE WITNESS: No.

17 BY MR. KISSNER:

18 Q. No?

19 A. (Shakes head in the negative.)

20 Q. So would you have received the same  
21 amount of consideration in a sale versus a plan  
22 sponsorship transaction?

23 MR. MANN: Objection to form.

24 THE WITNESS: I don't recall.

25 ///

1 BY MR. KISSNER:

2 Q. Okay. And did your fee depend on the  
3 identity of your transaction counterparty?

4 MR. MANN: Objection to form.

5 THE WITNESS: No.

6 BY MR. KISSNER:

7 Q. Why don't we turn in our binder to Tab 6  
8 which I'll ask be marked as Exhibit 2.

9 (Exhibit 2 marked.)

10 BY MR. KISSNER:

11 Q. Do you recognize this document?

12 A. I've -- I have never seen this document  
13 before.

14 Q. Can you tell me what it appears to be?

15 A. An engagement letter of Province.

16 Q. Engagement letter between?

17 A. Province and Cash Cloud or Coin Cloud.

18 Q. But you've never seen this document  
19 before?

20 A. No. The signature is Paul Huygens'.

21 Q. Okay. But you've never reviewed it?

22 A. I've never reviewed it.

23 Q. Could you turn to the second page and  
24 could you turn to paragraph 2 entitled  
25 "Compensation." Do you see that?

1 A. I do.

2 Q. And could you just read that to  
3 yourself. You don't have to read it out loud, but  
4 just read starting at paragraph 2, all the way to  
5 the end of subsection C. And just let me know when  
6 you're done.

7 A. Sure.

8 I'm finished, Andrew.

9 Q. Could you just describe, in your own  
10 words, what you understand paragraph 2 of this  
11 engagement letter to mean?

12 MR. MANN: Objection to form.

13 THE WITNESS: Paragraph 2, subsection  
14 "Compensation" lays out the different ways that a  
15 professional in our business could get paid.

16 BY MR. KISSNER:

17 Q. Okay. Is that it?

18 A. Uh-huh.

19 Q. Could you tell me what an "arranger fee"  
20 is?

21 MR. MANN: Objection to form.

22 THE WITNESS: Arranger fee is typically  
23 put in place when you have a DIP financing.

24 BY MR. KISSNER:

25 Q. Okay. So that's typically what an

1 arranger fee means.

2 Could you look at paragraph 2(b) here.

3 And do you see where it says an "arranger fee"?

4 A. Uh-huh.

5 Q. Could you tell me what you understand an

6 "arranger fee" to mean in the context of this

7 document?

8 MR. MANN: Objection to form. And I'll  
9 object to -- he's appearing today. We went through  
10 the items of six, seven, and eight. I don't know  
11 how this terms of engagement, him knowing "arranger  
12 fee" in the context of this document, ties into --

13 MR. KISSNER: Come on. You don't think  
14 the terms by which they were going to get paid is  
15 relevant to the conduct of the auction and the  
16 conduct of the sale? Just laying a foundation here.  
17 If you're going to object to form to everything, so.

18 MR. MANN: Okay.

19 BY MR. KISSNER:

20 Q. You can answer. And if you don't  
21 remember, I can read back the question.

22 A. The arranger fee is relevant for a DIP  
23 financing, as I previously stated.

24 Q. Okay. How is it relevant?

25 MR. MANN: Objection to form.



1 THE WITNESS: Province would receive a  
2 fee if we arrange for the party who provides the  
3 DIP.

4 BY MR. KISSNER:

5 Q. And there's a term here, it says a  
6 "Province lender." Do you see that?

7 A. Uh-huh.

8 Q. Do you have an understanding what at  
9 that term means?

10 MR. MANN: Objection to form.

11 THE WITNESS: Typically a Province  
12 lender is someone who we bring in as a third party  
13 that the company does not have a prior relationship  
14 with.

15 BY MR. KISSNER:

16 Q. So is the idea that you wouldn't receive  
17 a fee for a transaction consummated by a party  
18 Province didn't bring to the table? Is that fair?

19 MR. MANN: Objection to form.

20 THE WITNESS: Please define  
21 "transaction."

22 BY MR. KISSNER:

23 Q. Sure. So this letter says that Province  
24 will earn an arranger fee if it arranges financing  
25 with a Province lender. And you said that a

1 Province lender is a lender that Province identified  
2 for the company, fair?

3 MR. MANN: Objection to form.

4 THE WITNESS: That would be correct.

5 BY MR. KISSNER:

6 Q. So is the idea then that if Province  
7 didn't find the lender, Province wouldn't earn a  
8 fee?

9 MR. MANN: Objection to form.

10 THE WITNESS: Correct.

11 BY MR. KISSNER:

12 Q. Could you take a look at subparagraph C,  
13 restructuring fee, and can you go to the third line  
14 that begins "that may become due hereunder," and  
15 then read the portion beginning with "the company,"  
16 please.

17 A. "The company shall pay Province a fee in  
18 United States dollars in the amount of three percent  
19 of the value of all debt and equity financing of the  
20 company as of the effective date."

21 Q. Keep going.

22 A. "Provided, however, should all or a  
23 portion of the exit financing be provided by a  
24 Province lender, then such Province lender exit  
25 financing, whether through exit equity or debt

1 financing, the company shall pay Province a fee, in  
2 United States -- in the amount of one and a half  
3 percent of such Province lender exit financing, with  
4 any other exit financing generating a three percent  
5 fee as otherwise indicated above."

6 Q. Could you explain, in your own words,  
7 what you understand that to mean?

8 MR. MANN: Objection to form.

9 THE WITNESS: Effectively, Province is  
10 to receive a three percent of fee on the value of  
11 all debt equity financing of the company as of the  
12 effective date.

13 BY MR. KISSNER:

14 Q. Could you explain what you understand  
15 the proviso in that paragraph to mean?

16 MR. MANN: Objection to form.

17 THE WITNESS: Can you please read the  
18 proviso so I know what you're referring to?

19 BY MR. KISSNER:

20 Q. The portion you just read that began  
21 "provided however."

22 A. That we're going to receive a one and a  
23 half percent fee if it's a Province lender.

24 Q. And if it's not a Province lender you'd  
25 receive a different fee?

1 A. It says three percent.

2 Q. Okay. Help me understand. Why would  
3 you have gotten paid more if exit financing was  
4 provided by somebody who wasn't a Province lender?

5 MR. MANN: Objection to form.

6 THE WITNESS: I did not negotiate the  
7 fees here.

8 BY MR. KISSNER:

9 Q. Fair enough.

10 Before, do you recall, I asked you if  
11 the amount of consideration you'd receive in this  
12 matter depended on the identity of the counterparty?

13 A. I remember.

14 Q. Does this refresh your recollection as  
15 to whether the amount of compensation Province  
16 received in this engagement depended on the identity  
17 of the counterparty?

18 MR. MANN: Objection to form.

19 THE WITNESS: Yes. This is standard.

20 BY MR. KISSNER:

21 Q. Okay. But to be clear, the amount of  
22 consideration was contingent upon the identity of  
23 the party providing financing?

24 MR. MANN: Objection to form.

25 THE WITNESS: That's correct.

1 BY MR. KISSNER:

2 Q. And as you understand it, under this  
3 engagement letter, had there been an asset sale,  
4 would that have triggered a restructuring fee?

5 MR. MANN: Objection to form.

6 THE WITNESS: I think the answer would  
7 be yes.

8 BY MR. KISSNER:

9 Q. And why is that?

10 MR. MANN: Objection to form.

11 THE WITNESS: I think that could be  
12 considered a form of financing, an asset sale.

13 BY MR. KISSNER:

14 Q. All right. Why don't we turn to Tab 7  
15 which I'll mark as -- or I'll ask the court reporter  
16 to mark as Exhibit 3.

17 (Exhibit 3 marked.)

18 BY MR. KISSNER:

19 Q. Do you recognize this document?

20 A. I have seen many final retention orders.

21 Q. But do you recognize this document?

22 A. I have not read -- I have not read this  
23 document.

24 Q. Okay. If you'd like, feel free to take  
25 a minute to review it and then let me know when

1 you're done.

2 A. I am familiar with the document.

3 Q. Could you just tell me what it appears  
4 to be?

5 A. It appears to be the final order  
6 representing our Province engagement letter.

7 Q. And could you turn to page 3 and could  
8 you look at paragraph 2, and can you just read that  
9 to yourself. And could you tell me what you  
10 understand paragraph 2 to mean.

11 A. That the debtor is authorized to pay  
12 Province a fee in the amount of three percent of the  
13 amount of funds agreed to be loaned by any lender  
14 secured by Province in support of  
15 debtor-in-possession financing.

16 Q. So this was the court approving the  
17 arranger fee that was in the Province engagement  
18 letter, fair?

19 MR. MANN: Objection to form.

20 THE WITNESS: It appears to be.

21 BY MR. KISSNER:

22 Q. And could you read paragraph 3 to  
23 yourself.

24 A. Okay.

25 Q. What do you understand paragraph 3 to

1 mean?

2 A. It looks like it's the final order of  
3 the engagement letter.

4 Q. So the court approving the restructuring  
5 fee in the engagement letter, fair?

6 MR. MANN: Objection to form.

7 THE WITNESS: Correct.

8 BY MR. KISSNER:

9 Q. Okay. Could we turn to Tab 8 which I'll  
10 ask the court reporter to mark as Exhibit 4.

11 (Exhibit 4 marked.)

12 BY MR. KISSNER:

13 Q. Do you recognize this document?

14 A. I have not read this document.

15 Q. Have you ever seen it before?

16 A. No.

17 Q. Well, take a look and tell me when  
18 you're done.

19 A. I am aware of the issue.

20 Q. Could you tell me what this document  
21 appears to be?

22 A. This document is an amendment or a  
23 clarification to the order that was originally  
24 filed, based on comments from the trustee and the  
25 UCC.

1 Q. Do you know who negotiated this on  
2 behalf of Province?

3 A. Paul Huygens.

4 Q. Okay. So you said that this appears to  
5 be a modification or amendment to the original  
6 retention order, fair?

7 A. Clarification.

8 MR. MANN: Objection to form.

9 BY MR. KISSNER:

10 Q. Clarification.

11 What's a clarification?

12 A. It was a clarification that was asked  
13 for by the UCC.

14 Q. What were they asking to be clarified?

15 A. The definition of the incentive fee.

16 Q. If you know, can you tell me what the  
17 committee said was unclear about the definition of  
18 incentive fee?

19 A. I can read you paragraph K on page 3.

20 "Given the lack of clarity as to whether  
21 a restructuring fee is earned upon the consummation  
22 of any Section 363 asset sale and the parties'  
23 concerns that the estate may not be benefiting by  
24 incentivizing reorganization over an asset sale, the  
25 parties agree to resolve any lack of clarity



1 regarding the restructuring fee and its calculation  
2 as stipulated herein."

3 Q. So this was what we were talking about  
4 before, the lack of clarity as to whether Province  
5 would earn a fee upon an asset sale?

6 MR. MANN: Objection to form.

7 THE WITNESS: Yes.

8 BY MR. KISSNER:

9 Q. Now, when Province was retained, were  
10 you asked to pursue any particular form of  
11 transaction?

12 A. No.

13 Q. No. Okay.

14 Just a transaction that would be good  
15 for the company?

16 A. That's where you start.

17 Q. Could you -- and you're already at  
18 page 3 which is Bates-stamped ending 126.

19 Can you go to paragraph 1 and read that  
20 to yourself.

21 A. Will you repeat?

22 Q. If you go to paragraph 1 on the current  
23 page which is Bates-stamped 126.

24 A. Okay.

25 Q. Read it to yourself.

1 Do you understand this paragraph to be  
2 approving the restructuring fee?

3 A. Please define.

4 Q. Well, do you see on line 18 of this  
5 document where there's a defined term "restructuring  
6 fee"?

7 A. That is what's being stipulated.

8 Q. Okay. So you understand this paragraph  
9 to be approving the restructuring fee?

10 A. This is what's being stipulated.

11 Q. Okay. Is there a reason that you're  
12 saying "stipulated" versus "approved"?

13 MR. MANN: Objection to form.

14 THE WITNESS: The document says  
15 "stipulation."

16 BY MR. KISSNER:

17 Q. Okay. Fair.

18 Do you understand this restructuring fee  
19 to be different from that approved in the prior  
20 retention order?

21 MR. MANN: Objection to form.

22 BY MR. KISSNER:

23 Q. And to be clear, we're just talking  
24 about the restructuring fee.

25 A. This looks very similar to the

1 engagement letter.

2 Q. Do you see anything that's different or?

3 A. Not off the top of my head.

4 Q. Not a trick question.

5 A. No, I'm just saying not off the top of  
6 my head.

7 Q. Okay. Could you turn to page 4 which is  
8 Bates-stamped 127, and can you read paragraph 2 to  
9 yourself and let me know when you're done.

10 A. I am finished.

11 Q. Could you tell me what paragraph 2 says,  
12 in your own words?

13 A. That Province will receive three percent  
14 of any sales proceeds from an asset sale under a 363  
15 order with a cap of 500,000.

16 Q. So this paragraph is clarifying the  
17 ambiguity as to whether Province would be entitled  
18 to a fee in a sale, fair?

19 A. Correct.

20 Q. And these changes, they were requested  
21 by the committee?

22 A. Correct.

23 Q. And could you read paragraph 3 to  
24 yourself and let me know when you're done.

25 A. (Indicating.)

1 Q. And just remember to say "yes" or "no."

2 A. Finished.

3 Q. Thank you. I know it's awkward.

4 Could you tell me what paragraph 3 says,  
5 in your own words?

6 A. There's a cap of 500,000 on any asset  
7 sale.

8 Q. Who requested this cap?

9 A. I have no knowledge.

10 Q. Okay. Do you understand Province's fees  
11 to have been capped under the prior engagement  
12 letter and order?

13 MR. MANN: Objection to form.

14 THE WITNESS: No.

15 BY MR. KISSNER:

16 Q. You don't.

17 But through this document, there was now  
18 a cap at \$500,000?

19 MR. MANN: Objection to form.

20 THE WITNESS: Correct.

21 BY MR. KISSNER:

22 Q. Did you ever talk to anybody else at  
23 Province about this?

24 MR. MANN: Objection to form.

25 THE WITNESS: Paul Huygens.

1 BY MR. KISSNER:

2 Q. What did you talk to Paul Huygens about  
3 regarding this fee cap?

4 MR. MANN: Objection to form.

5 THE WITNESS: He informed me that this  
6 was being put in place.

7 BY MR. KISSNER:

8 Q. What was your reaction to learning there  
9 was a cap on fees?

10 MR. MANN: Objection to form.

11 THE WITNESS: No reaction.

12 BY MR. KISSNER:

13 Q. And what was his mood like, would you  
14 say, when you had that conversation?

15 MR. MANN: Objection to form.

16 THE WITNESS: No reaction.

17 BY MR. KISSNER:

18 Q. Did the imposition of a cap on fees  
19 impact your work at all in the Coin Cloud  
20 engagement?

21 A. No.

22 Q. Before Province was retained, do you  
23 know if there had been a investment banker or  
24 financial advisor retained before you?

25 MR. MANN: Objection to form.

1 THE WITNESS: Coin Cloud has had many  
2 advisors over the years.

3 BY MR. KISSNER:

4 Q. Are there any of which you're aware of  
5 off the top of your head?

6 A. M3.

7 Q. And M3 refers to M3 Partners?

8 A. Yes.

9 Q. Okay. Does the debtor currently employ  
10 M3?

11 A. No.

12 Q. Do you know why not?

13 MR. MANN: Objection to form.

14 THE WITNESS: I have no knowledge to  
15 that -- no knowledge on that topic.

16 BY MR. KISSNER:

17 Q. So you have no understanding as to why  
18 they no longer work for Coin Cloud?

19 MR. MANN: Objection to form.

20 THE WITNESS: Correct.

21 BY MR. KISSNER:

22 Q. Do you know if M3 was engaged as a  
23 financial advisor, investment banker or both?

24 MR. MANN: Objection to form.

25 THE WITNESS: I have no knowledge of

1 M3's engagement.

2 BY MR. KISSNER:

3 Q. Do you know if they contacted any  
4 parties regarding a transaction?

5 MR. MANN: Object to form.

6 MR. KISSNER: Just asking his knowledge.

7 THE WITNESS: I don't recall.

8 BY MR. KISSNER:

9 Q. Are you aware of any other financial  
10 advisors or investment bankers that were retained by  
11 Coin Cloud other than M3?

12 A. I don't recall.

13 Q. Do you know if B. Riley was ever  
14 employed by the debtor?

15 A. B. Riley was.

16 Q. Do you know if B. Riley is currently  
17 employed by the debtor?

18 MR. MANN: Objection to form.

19 THE WITNESS: No, they are not.

20 BY MR. KISSNER:

21 Q. They're not.

22 Do you have an understanding as to why  
23 B. Riley is no longer employed by the debtor?

24 MR. MANN: Objection to form.

25 THE WITNESS: No, I have no knowledge.

1 I'll slow down too.

2 BY MR. KISSNER:

3 Q. Do you know if B. Riley contacted any  
4 parties regarding a transaction with the debtor?

5 MR. MANN: Objection to form.

6 THE WITNESS: No knowledge.

7 BY MR. KISSNER:

8 Q. Do you know, did your -- strike that.

9 You said before that your ability to  
10 earn a fee under the engagement letter, the  
11 retention order and then the retention order as  
12 modified by the stipulation -- I think I have that  
13 right -- that was dependent upon whether Province  
14 had located the relevant counterparty?

15 MR. MANN: Objection to form.

16 BY MR. KISSNER:

17 Q. Is that correct?

18 A. On the financing, correct.

19 Q. What about on the sale -- strike that.

20 Okay. Could you turn back to Tab 8 -- I  
21 guess you still have it -- to paragraph 2 at the top  
22 of the page which discusses a restructuring fee for  
23 a sale transaction, right?

24 MR. MANN: Objection to form.

25 THE WITNESS: Okay.



1 BY MR. KISSNER:

2 Q. Do you understand your ability to earn a  
3 restructuring fee on a sales transaction depended  
4 upon whether Province had located the buyer or not?

5 MR. MANN: Objection to form.

6 THE WITNESS: It does not address that  
7 in that line.

8 BY MR. KISSNER:

9 Q. Okay. But outside of the four corners  
10 of this document, are you aware of whether the  
11 ability to earn a fee on a sale was dependent upon  
12 the identity of the buyer?

13 MR. MANN: Objection to form.

14 THE WITNESS: I don't recall.

15 BY MR. KISSNER:

16 Q. So we'll zoom out a little bit and we'll  
17 stop looking at this for a minute.

18 Are you familiar with what a "stalking  
19 horse" is?

20 A. I am.

21 Q. Can you explain what a stalking horse  
22 is?

23 A. Stalking horse is -- in a transaction is  
24 the buyer who is given certain protections because  
25 they were the first one to actually bid that the

1 debtor agreed to.

2 Q. So a stalking horse is someone -- what's  
3 a good word? -- obtained in connection with the  
4 sale process; fair to say?

5 MR. MANN: Objection to form.

6 THE WITNESS: You're not very clear.  
7 I'm not sure what you're saying with the word  
8 "obtain."

9 BY MR. KISSNER:

10 Q. That's fair. It's not a great verb.

11 A stalking horse would be involved in a  
12 sale process; is that fair to say?

13 A. A stalking horse is an interested party.

14 Q. With respect to a sale, though?

15 A. Correct.

16 Q. And do you know what a "363 sale" is, if  
17 I refer to that term?

18 A. I do.

19 Q. Could you explain what that is?

20 A. A 363 sale is done through a bankruptcy  
21 process. Within the court process, all assets are  
22 sold and the liabilities are left behind, in  
23 simplistic terms.

24 Q. And is it common for there to be a  
25 stalking horse, in your experience, as an interested

1 party in a 363 sale?

2 A. Successful 363 sales typically have a  
3 stalking horse.

4 Q. And do you know what the term "plan  
5 sponsor" refers to?

6 A. I do.

7 Q. Can you explain what that is?

8 A. In a plan of reorganization, it's  
9 somebody who injects -- typically injects capital to  
10 help the company reorganize.

11 Q. Is there a plan sponsor, in your  
12 experience, typically involved in a 363 sale?

13 A. No. They're typically separate.

14 Q. Is there typically a stalking horse in a  
15 plan sponsor process?

16 A. There can be.

17 Q. Is a plan sponsor and a stalking horse  
18 different or are they more or less the same  
19 concepts?

20 MR. MANN: Objection to form.

21 THE WITNESS: They are different  
22 concepts but related.

23 BY MR. KISSNER:

24 Q. Could you elaborate on that?

25 A. You know, a plan sponsor can come

1 typically in two forms, one which is the debtor and  
2 the company agree to an individual as a plan sponsor  
3 or an institution, or number two is sometimes a plan  
4 sponsor is effectively a buyer of the assets through  
5 a plan construct, and is more of a stalking horse  
6 where other people have the ability to actually  
7 compete for that same plan sponsor.

8 Q. Can you tell me if you know why might a  
9 debtor -- strike that.

10 Are there reasons why, in your  
11 experience, a debtor might prefer a plan sponsor  
12 versus a 363 sale?

13 MR. MANN: Objection to form.

14 THE WITNESS: They are different  
15 concepts. Typically a plan sponsor in a plan of  
16 reorganization means the existing company emerges  
17 from bankruptcy. A 363 is an asset sale.

18 BY MR. KISSNER:

19 Q. After an asset sale, is it typical for  
20 existing management to remain in place?

21 MR. MANN: Objection to form.

22 THE WITNESS: Every situation is  
23 different. I will not generalize.

24 BY MR. KISSNER:

25 Q. About how many -- if you can ballpark,

1 about how many engagements have you been involved  
2 with advising a debtor through a restructuring  
3 process?

4 A. I don't recall.

5 Q. Is it more than ten?

6 A. I don't recall. I don't want to state  
7 things on the record that I don't have the  
8 information on. Happy to come back with you on  
9 that.

10 Q. Okay. Would it be fair to say it's been  
11 a lot?

12 MR. MANN: Objection to form.

13 THE WITNESS: I have been a  
14 restructuring advisor for three and a half years and  
15 I've worked on numerous engagements.

16 BY MR. KISSNER:

17 Q. Have you ever been -- strike that.

18 Have you ever worked on an engagement in  
19 which there was a 363 sale after which management  
20 remained in place?

21 MR. MANN: Objection to form.

22 THE WITNESS: Not at Province, no.

23 BY MR. KISSNER:

24 Q. How about before Province?

25 MR. MANN: Objection to form.

1 THE WITNESS: I've only been a  
2 restructuring advisor for three and a half years in  
3 this capacity.

4 BY MR. KISSNER:

5 Q. Conversely, is it typical in a plan  
6 sponsor transaction for management to remain in  
7 place?

8 MR. MANN: Objection to form.

9 THE WITNESS: Varies. Every situation's  
10 different. There is no -- there is no hard and fast  
11 answer. Every situation is different.

12 BY MR. KISSNER:

13 Q. Have you ever advised a debtor through a  
14 restructuring process that involved a plan  
15 sponsorship or plan of reorganization?

16 MR. MANN: Objection to form.

17 THE WITNESS: Can you expand on your  
18 definition?

19 BY MR. KISSNER:

20 Q. Sure. So you've advised debtors in  
21 connection with restructurings before, correct?

22 A. Uh-huh.

23 Q. And those restructurings have presumably  
24 involved some sort of transaction, fair?

25 MR. MANN: Objection to form.

1 THE WITNESS: I have -- okay. Trying to  
2 figure out what you're asking.

3 BY MR. KISSNER:

4 Q. I'm asking if you've ever advised a  
5 debtor on a transaction that took the form of a plan  
6 of reorganization?

7 MR. MANN: Objection to form.

8 THE WITNESS: No.

9 BY MR. KISSNER:

10 Q. No. Okay.

11 So we've been talking about advising  
12 debtors, right? I believe you said before that  
13 you've also advised creditors?

14 A. Correct.

15 Q. Would it be fair to say that, as a  
16 principal, you've also been involved in  
17 restructurings as a creditor?

18 MR. MANN: Objection to form.

19 THE WITNESS: I have.

20 BY MR. KISSNER:

21 Q. And we talked a little bit about, from  
22 the debtor's perspective, the differences between a  
23 363 sale and a plan sponsor transaction, right?

24 A. Yeah.

25 Q. Could you tell me why, in your

1 experience, a creditor might have a preference as to  
2 a plan sponsorship versus a 363 sale?

3 MR. MANN: Objection to form.

4 THE WITNESS: The creditor has the same  
5 incentive as the debtor's advisor, which is to  
6 maximize value for individual creditors and the  
7 estate as a fiduciary.

8 BY MR. KISSNER:

9 Q. In your experience, does the form of  
10 transaction affect the ability to maximize value?

11 A. No.

12 Q. No.

13 Now, when Province was engaged, you said  
14 that there was no particular mandate for a specific  
15 type of transaction, correct?

16 A. Not on day one.

17 Q. Did there come a time at which the  
18 debtor directed Province to pursue a specific form  
19 of transaction?

20 A. No. Province conducted its work,  
21 consulted with parties and worked on transaction  
22 structure after consultation.

23 Q. Okay. Do you know who CKDL Credit is?

24 A. Yes.

25 Q. Who are they?



1           A.           They should be the DIP lender entity for  
2       Jason Lu and Komodo Bay.

3           Q.           And who's Komodo?

4           A.           They're an investment fund based out of  
5       Miami.

6           Q.           And could we turn back to Tab 6, which  
7       is Exhibit 2, and we'll go to Exhibit 1, which top  
8       right corner says "page 20."

9           A.           You said Tab 6?

10          Q.           Yes.

11          A.           Okay. What page?

12          Q.           It's Exhibit 1, and in the top right  
13       corner it says "page 20 of 21."

14          A.           Okay.

15          Q.           And can you read -- do you see where it  
16       says "company lenders"?

17          A.           I do.

18          Q.           Can you read the first entity listed  
19       under "company lenders"?

20          A.           Komodo Bay.

21          Q.           And that's the Komodo that you were  
22       referring to?

23          A.           Correct.

24          Q.           What does a "company lender" mean in the  
25       context of this engagement letter?

1 MR. MANN: Objection to form.

2 THE WITNESS: That the company provided  
3 representatives as potential financing for the  
4 company.

5 BY MR. KISSNER:

6 Q. Did Province earn a fee in a financing  
7 executed with a company lender?

8 MR. MANN: Objection to form.

9 THE WITNESS: No.

10 BY MR. KISSNER:

11 Q. And by the way, if I refer to -- if we  
12 refer to Komodo Bay -- strike that.

13 If I refer to "CKDL" or "the DIP lender"  
14 today, you'll understand that I'm talking about CKDL  
15 Credit, the --

16 A. The DIP lender.

17 Q. -- vehicle of Komodo Bay?

18 A. Yes, sir.

19 Q. Okay. Excellent.

20 Let's go to Tab 40, which I'll ask be  
21 marked as Exhibit 5.

22 (Exhibit 5 marked.)

23 BY MR. KISSNER:

24 Q. And if you could turn to the third page.

25 A. (Indicating.)

1 Q. Do you know what this document is?

2 A. Is this the bid procedures motion?

3 Q. Is this a draft?

4 A. It is stated as draft on the upper  
5 right.

6 Q. So could you describe, in your own  
7 words, what this is?

8 A. This looks like it's of a motion of bid  
9 procedures for a plan sponsor.

10 Q. Now, we were talking about CKDL, the DIP  
11 lender, before, right?

12 A. Uh-huh. Yes.

13 Q. Were they ever proposed to be the  
14 stalking horse?

15 A. No.

16 Q. No?

17 A. Not to my knowledge.

18 Q. Fair.

19 Could you turn to page 4 of this  
20 exhibit. Apologies for doing this. So I don't know  
21 why these aren't Bates-stamped. I'm really sorry.

22 So if you could go to -- there's  
23 Exhibit 1 to this document. If you could just  
24 flip -- I'll tell you when you get there.

25 MR. KISSNER: Off the record.

1 (A discussion is held off the record.)

2 MR. KISSNER: Back on the record.

3 BY MR. KISSNER:

4 Q. Could you turn to page 4 of this  
5 document -- actually, page 8. Could you tell me  
6 what this appears to be?

7 A. It's just a draft document.

8 Q. A draft of what?

9 A. It's just a draft bidding procedures.

10 Q. Draft bidding procedures. Okay.  
11 If you could flip, one -- two pages  
12 over?

13 A. Which direction?

14 Q. Further.

15 A. Okay.

16 Q. And if you could look at -- there's a  
17 paragraph 10. Could you read that to me, the first  
18 sentence.

19 A. "The debtor has selected CKD [sic]  
20 Credit, LLC as the stalking horse bidder."

21 Q. Thank you.

22 Does this refresh your recollection as  
23 to whether CKDL was originally the stalking horse?

24 A. No. It was a draft.

25 Q. Do you understand why this draft would

1 have said this?

2 A. We were working -- my assumption is we  
3 were working through milestones.

4 Q. And by "we," you mean whom?

5 A. Fox.

6 Q. And "Fox" refers to Fox Rothschild,  
7 counsel to the debtor?

8 A. Correct.

9 Q. And when you say you were "working  
10 through milestones," can you explain what you mean  
11 by that?

12 A. Every document where you have a DIP  
13 lender has certain milestones that are attached to  
14 it, in order to receive that financing, that they  
15 want in place. And the debtor has the right to  
16 negotiate those and discuss whether those milestones  
17 are something that they view as acceptable or not,  
18 in order to receive financing.

19 Q. And who were you negotiating those  
20 milestones with?

21 A. The DIP lender.

22 Q. And do you recall what the subject of  
23 the dispute was over those milestones?

24 MR. MANN: Objection to form.

25 THE WITNESS: I don't recall.

1 BY MR. KISSNER:

2 Q. You don't recall.

3 A. (Shakes head in the negative.)

4 Q. Was that dispute ever resolved?

5 MR. MANN: Objection to form.

6 THE WITNESS: I don't recall. You'll  
7 need to be specific about what "that dispute" was.

8 BY MR. KISSNER:

9 Q. Well, I wasn't there.

10 Could you describe what the dispute was?

11 A. I don't have any recollection.

12 Q. Okay. You just know it related to the  
13 milestones?

14 A. I don't even -- I don't have a  
15 recollection there was a dispute.

16 Q. But CKDL was not ultimately selected as  
17 stalking horse, correct?

18 A. RockItCoin was the stalking horse bid.

19 Q. Is RockItCoin different from CKDL?

20 A. They are.

21 Q. So CKDL was not selected as the stalking  
22 horse?

23 A. That's correct.

24 Q. Now, under this draft of the bid  
25 procedures, was this -- were these bid procedures

1 for a particular type of transaction?

2 A. I have not reviewed this document ahead  
3 of time.

4 Q. Do you have a recollection?

5 A. I don't recall.

6 Q. Do you know if these bid procedures were  
7 for a 363 sale?

8 A. I would have to review the document. I  
9 don't recall.

10 Q. Why don't you take a minute.

11 A. This draft?

12 Q. This draft, correct.

13 A. "Order establishing bidding procedure  
14 and deadlines relating to the proposal for a plan of  
15 reorganization for the debtor."

16 Q. Does that refresh your recollection as  
17 to whether this draft bid procedures related to a  
18 particular type of transaction?

19 A. Based on what I've just read here,  
20 correct.

21 Q. Okay. And based off of what you've just  
22 read, what type of transaction do you understand  
23 this draft of the bidding procedures to contemplate?

24 A. Plan of reorganization for the debtor.

25 Q. And a plan of reorganization, that's not

1 a 363 sale, correct?

2 A. Correct.

3 Q. Can we go to Tab 11, which I'll ask that  
4 we mark as Exhibit 6.

5 (Exhibit 6 marked.)

6 THE WITNESS: You said "Tab 11"?

7 MR. KISSNER: Tab 11, yes. Sorry.

8 BY MR. KISSNER:

9 Q. Do you recognize this document?

10 A. This is the bid procedures motion. I  
11 think.

12 Q. Could you describe briefly what this  
13 document is, beyond a bid procedures motion?

14 A. I can read you exactly what it is. This  
15 is "Debtor's motion for entry of an order approving  
16 auction and bidding procedures for potential plan  
17 sponsors or the purchase of substantially all of the  
18 debtor's assets; approving form notice to be  
19 provided to interested parties; and scheduling a  
20 hearing to consider approval of the highest and best  
21 transaction, cure objections, and confirmation of  
22 the proposed toggle plan."

23 Q. And could you describe, in your own  
24 words, what you understand all that to mean?

25 MR. MANN: Objection to form.



1 THE WITNESS: This motion will basically  
2 simply determine rights and remedies of all parties  
3 and the way the debtor would like the process to  
4 proceed.

5 BY MR. KISSNER:

6 Q. And what process is that?

7 A. "Approve the auction and bidding  
8 procedures for potential plan sponsors or the  
9 purchase of substantially all of the debtor's  
10 assets."

11 Q. So these bid procedures contemplated  
12 either a 363 sale or a plan sponsorship transaction;  
13 is that fair?

14 MR. MANN: Objection to form.

15 THE WITNESS: That's fair.

16 BY MR. KISSNER:

17 Q. But the prior draft that we just  
18 reviewed only pertained to a plan sponsorship  
19 transaction?

20 MR. MANN: Objection to form.

21 THE WITNESS: I did not review the  
22 document, but in form, in title, that's what it  
23 said.

24 BY MR. KISSNER:

25 Q. Okay. Do you have a recollection as to

1 why that changed?

2 A. My recollection is that the DIP lender  
3 worked with us on that.

4 Q. Did you talk to Enigma at all about the  
5 decision to include a 363 sale in these bid  
6 procedures?

7 A. I did not.

8 Q. And when I say "Enigma," you understand  
9 me to refer to my client Enigma Securities Limited?

10 A. I personally did not.

11 Q. Are you aware of anybody else at  
12 Province that might have?

13 A. I don't recall.

14 Q. To your knowledge, did Enigma direct  
15 Province or the debtor to revise the bid procedures  
16 to include a 363 sale?

17 MR. MANN: Objection to form.

18 THE WITNESS: I have no knowledge on  
19 that topic.

20 BY MR. KISSNER:

21 Q. To your knowledge, did Enigma direct the  
22 debtor to pursue a 363 sale?

23 A. I have no knowledge on that topic.

24 Q. Did Province -- strike that.

25 Did you ever talk to anybody else at

1 Province about the decision to pursue a 363 sale  
2 versus a plan sponsorship transaction?

3 MR. MANN: Objection to form.

4 THE WITNESS: Our team speaks about  
5 different topics daily.

6 BY MR. KISSNER:

7 Q. Did you personally have a preference  
8 between the two for this debtor?

9 MR. MANN: Objection to form.

10 THE WITNESS: My preference is to  
11 maximize value for all creditors.

12 BY MR. KISSNER:

13 Q. Did you have a view as to which  
14 transaction would maximize value for all creditors?

15 MR. MANN: Objection to form.

16 THE WITNESS: I think they both -- at  
17 that time, potentially, both could be the maximizing  
18 value.

19 BY MR. KISSNER:

20 Q. And "at that time," you're referring to  
21 what period of time?

22 A. When we were strategizing on the  
23 appropriate path for the company.

24 Q. And when was that approximately?

25 A. Over a multi-month period.

1 Q. How about this, do you recall when these  
2 bid procedures were filed?

3 A. I do not.

4 Q. Do you want to look at page 1 of  
5 Exhibit 6, which is right in front of you, and look  
6 up at the very top, the text at the top of the page.

7 A. Entered 4/7/23.

8 Q. Does that refresh your recollection as  
9 to when the bid procedures were filed?

10 A. It does.

11 Q. So at the time that the bid procedures  
12 were filed, which appears to have been April 7th,  
13 you still thought -- strike that.

14 At the time of April 7th, you did not  
15 yet have a view as to whether a 363 sale or a plan  
16 sponsorship transaction would be better?

17 MR. MANN: Objection. Form.

18 THE WITNESS: Correct.

19 BY MR. KISSNER:

20 Q. Do you know if Province's fees would  
21 have differed between a 363 sale and a plan  
22 sponsorship transaction?

23 MR. MANN: Objection to form.

24 THE WITNESS: Not materially.

25 ///

1 BY MR. KISSNER:

2 Q. Not materially?

3 Well, could we turn to back to Tab 8,  
4 which was Exhibit 4.

5 A. Is this right (indicating)? Okay.

6 Q. Could you go to page 3, paragraph 1.

7 A. Okay.

8 Q. If you go down to line 20, could you  
9 read to yourself the passage beginning with  
10 "provided" and ending with the word "above"?

11 A. "Provided, however, should" --

12 Q. You can read it to yourself.

13 A. Okay.

14 Q. Do you understand this passage to mean  
15 that if exit financing was provided by a Province  
16 lender, Province's fee would have been one and one  
17 half percent of such exit financing?

18 A. Uh-huh.

19 MR. MANN: Objection to form.

20 BY MR. KISSNER:

21 Q. And do you understand this passage to  
22 mean that if exit financing was provided by any  
23 party other than a Province lender, a fee of three  
24 percent of such exit financing would have been  
25 earned?

1 MR. MANN: Objection to form.

2 THE WITNESS: Understood.

3 BY MR. KISSNER:

4 Q. Would it be fair to say that a plan  
5 sponsorship transaction would involve exit  
6 financing?

7 A. Sometimes.

8 Q. When wouldn't it?

9 A. Not every company is the same. Not  
10 everyone needs the same type of exit financing.  
11 Generalizations. I won't generalize.

12 Q. Okay. Fair enough.

13 Could you turn to the next page,  
14 paragraph 2. Can you read just paragraph 2 again to  
15 yourself and let me know when you're done.

16 A. I am finished.

17 Q. Do you understand this to mean that in  
18 the event of a 363 sale, Province would earn a three  
19 percent fee regardless of the identity of the buyer?

20 A. I do.

21 Q. So with that in mind, I guess I'll ask  
22 again.

23 Did you have any preference between  
24 pursuing a 363 sale or a plan sponsorship  
25 transaction?

1 MR. MANN: Objection to form.

2 THE WITNESS: No.

3 BY MR. KISSNER:

4 Q. Would you agree that Province was  
5 potentially eligible to earn more in a plan  
6 sponsorship transaction than a 363 sale?

7 MR. MANN: Objection to form.

8 THE WITNESS: Can you rephrase?

9 BY MR. KISSNER:

10 Q. Well, sure.

11 So in a plan sponsorship transaction  
12 that might involve exit financing, Province's  
13 ability to earn a fee was in part based off of the  
14 identity of the party providing exit financing,  
15 fair?

16 A. Potentially.

17 Q. And in the case of a 363 sale,  
18 Province's ability to earn a fee, it didn't depend  
19 on the identity of the buyer, fair?

20 A. That is accurate.

21 Q. Do you think that that had an impact on  
22 Province's decision-making?

23 A. No.

24 Q. Did it have an impact on your  
25 decision-making?

1 A. No.

2 Q. Can you tell me what a "credit bid" is?

3 MR. MANN: Objection to form.

4 MR. KISSNER: Strike that.

5 BY MR. KISSNER:

6 Q. Do you know what a "credit bid" is?

7 A. I do.

8 Q. Could you explain what it means?

9 A. It's when a lender has secured  
10 collateral, in the typical case, where they're able  
11 to use their debt securities to bid for a company  
12 using their debt as first form of consideration.

13 Q. So in laymen's terms, it's when you bid  
14 your debt in return for the collateral that secures  
15 that debt?

16 A. That's correct.

17 Q. Was Province's ability to earn a fee  
18 contingent upon -- strike that.

19 Could Province earn a fee in connection  
20 with a bid that was a credit bid?

21 A. Paragraph 2, "or otherwise not  
22 constituting any proceeds that are credit bid by any  
23 secured lender of the debtor on any liquidated  
24 claim."

25 Q. What do you understand that to mean?



1 A. We would not.

2 Q. You would not earn a restructuring fee  
3 on a bid that took the form of a credit bid?

4 MR. MANN: Objection to form.

5 THE WITNESS: Correct.

6 BY MR. KISSNER:

7 Q. Did that impact Province's  
8 decision-making in this case?

9 A. No.

10 Q. Did it impact your decision-making in  
11 this case?

12 A. No.

13 MR. MANN: Objection to form.

14 MR. KISSNER: And could we go off the  
15 record for a second.

16 (A discussion is held off the record.)

17 MR. KISSNER: Back on the record.

18 BY MR. KISSNER:

19 Q. Now, before, we were talking a little  
20 bit about the difference between a 363 sale and a  
21 plan sponsorship transaction. Do you recall that?

22 A. I do recall.

23 Q. Can a plan sponsor credit bid?

24 A. Potentially.

25 Q. How would that work?

1           A.           Plan sponsor -- you know, if the  
2           companies capitalized correctly on the back end,  
3           then a -- then a credit bid is possible to become  
4           the plan sponsor.

5           Q.           So a debt for equity swap, more or less?

6           A.           Could be.

7           Q.           As you understood it -- strike that.

8                       Do you know if Province would have  
9           earned a fee on a debt for equity swap?

10                      MR. MANN: Objection to form.

11                      THE WITNESS: I do not.

12           BY MR. KISSNER:

13           Q.           Well, why don't we turn back to page 3,  
14           paragraph 1. If you could read the first sentence  
15           to yourself, from line 17 to line 20.

16           A.           We would not.

17           Q.           You would not earn a fee on a --

18           A.           "Excluding any" --

19           Q.           -- debt for equity swap?

20           A.           -- "amounts loaned by the company  
21           lender." I assume that's your assumption for a  
22           credit bid, but it is unclear, the language.

23           Q.           So would it be fair to say then that the  
24           terms of your engagement incentivized Province to  
25           find new money for the company as opposed to a swap

1 of existing debt?

2 A. No.

3 MR. MANN: Objection to form.

4 BY MR. KISSNER:

5 Q. No.

6 But you just said that you wouldn't have  
7 earned a fee in a scenario where there was a debt  
8 for equity swap, correct?

9 MR. MANN: Objection to form.

10 THE WITNESS: Province does not make  
11 decisions for companies based on fees.

12 BY MR. KISSNER:

13 Q. Would you agree that Province -- strike  
14 that.

15 You testified earlier that, while  
16 working at Province, you've been engaged by debtors  
17 and borrowers in the past for transactions?

18 MR. MANN: Objection to form.

19 THE WITNESS: I have not been engaged by  
20 debtors, but I've been engaged by borrowers.

21 BY MR. KISSNER:

22 Q. And what would the -- in your words,  
23 what would be the difference between a debtor and a  
24 borrower?

25 MR. MANN: Objection to form.

1 THE WITNESS: Debtor is the company, a  
2 borrower is typically a lender to the company.

3 BY MR. KISSNER:

4 Q. I think we might have some confusion on  
5 that.

6 A. Okay.

7 Q. You've --

8 A. They can be considered the same thing.  
9 It's terminology. I understand your point.

10 Q. In those prior engagements, did -- were  
11 Province's fees memorialized in an engagement  
12 letter?

13 MR. MANN: Objection to form.

14 THE WITNESS: All Province fees are  
15 memorialized in engagement letters.

16 BY MR. KISSNER:

17 Q. Did any of those engagements, to your  
18 recollection -- strike that.

19 Do you recall what the fee arrangements  
20 were for those prior engagements?

21 A. I don't.

22 Q. Do you recall if any of your prior  
23 engagements have involved a contingency fee?

24 A. I have worked on prior engagements with  
25 contingency fees.

1 Q. Do you have an understanding as to why a  
2 client might include a contingency fee -- strike  
3 that.

4 Do you have an understanding as to why a  
5 client might agree to pay a contingency fee to a  
6 financial advisor or investment banker?

7 MR. MANN: Objection to form.

8 THE WITNESS: To be equally incentivized  
9 to share in success.

10 BY MR. KISSNER:

11 Q. So a contingency fee, as you understand  
12 it, is at least in part intended to incentivize the  
13 advisor?

14 MR. MANN: Objection to form.

15 THE WITNESS: Yes.

16 BY MR. KISSNER:

17 Q. Would you agree that the restructuring  
18 fee in Province's engagement letter with Coin Cloud  
19 is a contingency fee?

20 A. Yes.

21 Q. Do you think its purpose was to  
22 incentivize Province to do something?

23 MR. MANN: Objection to form.

24 THE WITNESS: No.

25 ///

1 BY MR. KISSNER:

2 Q. What do you understand its purpose to  
3 be, if not to incentivize Province?

4 A. It's the standard fee on the back end of  
5 a reorganization, from my perspective. It's  
6 incentivizing us to have the company exit from  
7 bankruptcy, in whatever form that may take, whether  
8 it be an asset sale or a plan of reorganization. It  
9 incentivizes for a success -- the best outcome we  
10 can come to as possible.

11 MR. KISSNER: Okay. I think we can  
12 break now and go off the record because that's all I  
13 have for now before we get into other topics.

14 THE WITNESS: That's fine.

15 (A lunch recess is taken.)

16 MR. KISSNER: Mason, go ahead. Your  
17 show.

18 EXAMINATION

19 BY MR. HIGGINS:

20 Q. Sir, hello. Can you see me and hear me  
21 okay?

22 A. I do.

23 Q. Excellent.

24 So my name is Mason. I'm an attorney  
25 for Av Tech Capital or as -- better known as AVT

1 Nevada LP.

2 So the same notes apply. My questioning  
3 is for yours. And I -- I will note that I talk  
4 quite fast sometimes. If you lose me at all, just  
5 say "hey, hold up a second, what did you say," and  
6 I'll ask it again. All right?

7 A. Sounds great.

8 Q. Sounds good.

9 Let's start off with talking about how  
10 the debtor has characterized AVT. So I want to  
11 refer you to what's marked as Tab 11 in your binder  
12 there. Did you find that?

13 A. Yeah.

14 Q. What is that document? I'm sorry. I  
15 cut you off.

16 A. Make sure we're on the right one.  
17 Motion for entry of an order approving auction and  
18 bidding procedures?

19 Q. That should be correct, yeah.

20 Can we agree the document is filed as  
21 Document 392 and was filed on April 27, 2023?

22 A. 4/7/23, yes.

23 Q. Perfect.

24 A. Is that the right document? I think  
25 we're on the same page.

1 Q. All right. If we scroll down to page 7  
2 of that document, using the upper right-hand corner.  
3 There's those blue page numbers up there.

4 A. "Stalking horse," on the bottom of that  
5 page?

6 Q. Page 7, using the blue page numbers, is  
7 page 6 of the document. You'll see -- there should  
8 be footnotes at the bottom of that page.

9 A. Okay. Got it. Thank you.

10 Q. Would you please read for me that first  
11 paragraph of footnote 3 at the bottom of the page.

12 A. "Although AVT Nevada LP filed a UCC-1  
13 financing statement against the leased DCMs, the AVT  
14 financing arrangement purports to be a true lease,  
15 with AVT filing the AVT UCC-1 solely as  
16 precautionary measure. Accordingly, debtor assumes  
17 that AVT is not a secured creditor for purpose of  
18 this motion, with a reservation of rights on issues  
19 for context. See McAlary declaration."

20 Q. Can we agree that, as of the date of  
21 that document, the debtor understood AVT to be a  
22 lessor in this proceeding?

23 A. That is what the footnote says.

24 Q. And additionally, that AVT held a true  
25 lease over those AVT DCMs?



1           A.           This is -- this is -- it's -- but this  
2           is all in a draft form, so that's what it says, it  
3           says, quote, true lease.

4           Q.           Okay. And can we also agree that, as of  
5           the date of this document, the debtor did not -- I'm  
6           sorry, strike that -- was not treating AVT as a  
7           secured creditor?

8                       MR. KISSNER: Objection to form.

9                       THE WITNESS: That's -- that's not  
10          correct. All this says is that you filed a UCC-1  
11          and a proof of claim as a secured creditor. This  
12          says that you did that as a precautionary measure.  
13          It does not reference whether they were considering  
14          you in this -- this paragraph whether you were a  
15          true lease or a secured creditor. It just says you  
16          had a precautionary measure, did that.

17          BY MR. HIGGINS:

18          Q.           To refer you back to that same footnote  
19          there, are we in dispute that that footnote provides  
20          that AVT is not a secured creditor for this motion's  
21          purposes?

22          A.           This says "with a reservation of  
23          rights."

24          Q.           Okay. So then we're --

25          A.           With a reservation of rights.

1 Q. Okay. So we are otherwise agreeing,  
2 noting, of course, they reserve rights on the issue.

3 MR. KISSNER: Objection to form.

4 BY MR. HIGGINS:

5 Q. Can I have a verbal answer, please?

6 A. I didn't know there was a question. You  
7 made a statement.

8 Q. That was my question. So --

9 A. Can you rephrase then, sir.

10 Q. Of course. Thank you for asking me to.

11 So we're otherwise agreed that, noting  
12 the debtor's reservation of rights, AVT was not  
13 being treated as a secured creditor for this  
14 motion's purposes?

15 MR. KISSNER: Objection to form.

16 THE WITNESS: I don't think this note  
17 says that.

18 BY MR. HIGGINS:

19 Q. Okay. Let's move on then. Let's turn  
20 to Tab 27 in front of you in your binder.

21 A. Sure.

22 (Exhibit 7 marked.)

23 MR. KISSNER: And this is Andrew  
24 Kissner. While we're doing that, it wasn't relevant  
25 before, but can we just stipulate for the record

1 that objections raised by one party are preserved  
2 for all parties?

3 MR. MANN: Yeah. That sounds great.

4 MR. KISSNER: Is that all right,  
5 Mr. Higgins?

6 MR. HIGGINS: That's all right. Thanks  
7 for asking.

8 MR. KISSNER: Excellent.

9 THE WITNESS: Tab 27, I am there, sir.

10 BY MR. HIGGINS:

11 Q. Thank you.

12 What is this document?

13 A. Motion for order confirming auction  
14 results; approving the sale of certain of the  
15 debtor's assets to Heller Capital and Genesis Coin  
16 free and clear of liens, claims, encumbrances and  
17 other interests; authorizing the assumption and  
18 assignment of certain of the debtor's executory  
19 contracts and unexpired leases related thereto; and  
20 granting related relief.

21 Q. Thank you.

22 And can we agree for the record this is  
23 Document 714?

24 A. Yes. I see it on the top in blue.

25 Q. And it was filed on June 16, 2023?

1 A. June 16, 2023.

2 Q. And if I call this document "the sale  
3 motion," will you understand that reference?

4 A. Sure. I can agree with that.

5 Q. Were you involved in drafting or  
6 preparing this motion?

7 A. My involvement was providing a  
8 declaration to the sale results.

9 Q. Okay. Were you otherwise involved in  
10 reviewing drafts of this motion or otherwise in  
11 preparing what we have before us?

12 A. I don't recall if I actually reviewed  
13 this draft or just provided the declaration.

14 Q. Please turn to page 15 of that document,  
15 again using the markings in the upper right corner.

16 A. Sure. Is that Exhibit A, Heller Asset  
17 Purchase Agreement?

18 Q. It is.

19 And can we agree that "Heller" refers to  
20 Heller Capital Group, LLC?

21 A. Yes, sir.

22 Q. All right. Please turn ahead three more  
23 pages to what's marked as page 18 on that document.

24 A. 18 of 66. Okay.

25 Q. And do you see where it's marked

1 "Section 1.9" of the Heller APA?

2 A. I do.

3 Q. And what's the title of Section 1.9 of  
4 the Heller APA?

5 A. "Purchase Price Adjustment For AVT  
6 Nevada LP Machines."

7 Q. Please read me that first sentence of  
8 that section.

9 A. "Debtor leases approximately 483 DCMs  
10 from AVT Nevada LP, who has agreed in principle to  
11 allow debtor to include the AVT DCMs as part of the  
12 purchase assets."

13 Q. Can we agree, then, as of the date of  
14 this document, that the debtor understood AVT to be  
15 a lessor regarding those AVT DCMs?

16 MR. MANN: Objection to form.

17 THE WITNESS: I am not going to speak to  
18 the group -- to the entire debtor professionals of  
19 what they thought.

20 BY MR. HIGGINS:

21 Q. To your knowledge, who drafted this  
22 document?

23 A. Fox Rothschild.

24 Q. Debtor's counsel, correct?

25 A. Mason, one second. Just getting some

1 coffee, sorry, handed to me.

2 Continue, Mason.

3 Q. No problem at all.

4 And Fox Rothschild is debtor's counsel;  
5 is that correct?

6 A. Correct.

7 Q. To your knowledge, was the debtor  
8 furnished a copy of this motion and its exhibits  
9 before it was filed?

10 A. Was the debtor?

11 Q. Furnished a copy of this motion and the  
12 exhibits to it before it was filed?

13 A. And when you refer to the "debtor" as --  
14 definitionally as which parties? As Danny Ayala?  
15 As director of the board? And Chris McAlary, if he  
16 was still there?

17 Q. I'm referring to Cash Cloud, Inc., dba  
18 Coin Cloud, or anybody authorized to speak on its  
19 behalf.

20 A. Yes. They have -- I'm sure have seen  
21 this document.

22 Q. Okay. So then to ask my question a  
23 little bit differently, we can agree this document  
24 purports -- strike that.

25 This document identifies that AVT leases

1 certain DCMs to the debtor?

2 MR. MANN: Objection to form.

3 THE WITNESS: This document talks about  
4 AVT as a lease, despite a proof of claim being filed  
5 by AVT as a secured creditor.

6 BY MR. HIGGINS:

7 Q. All right. Are you aware of or privy to  
8 any discussions between the debtor and its counsel,  
9 from around June 16, 2023, regarding AVT's status as  
10 a lessor?

11 A. I was not involved in those  
12 conversations.

13 Q. Did any exist?

14 A. I was not involved in those  
15 conversations.

16 Q. Do you have any reason to believe that  
17 AVT and Fox Rothschild would disagree at this time  
18 regarding AVT's status in these proceedings?

19 A. I have no knowledge of that  
20 conversation.

21 Q. Okay. Can you please read the following  
22 sentence on that same Section 1.9, beginning with  
23 "prior to"?

24 A. Sorry, just trying to find the --

25 Q. No problem.

1 A. Where does it follow?

2 MR. KISSNER: It's the second sentence.

3 THE WITNESS: Oh, thank you.

4 "Prior to any hearing to approve the  
5 sale order, debtor shall obtain written consent from  
6 AVT for the inclusion of AVT DCMs in the purchased  
7 assets."

8 BY MR. HIGGINS:

9 Q. And please keep going one more sentence.

10 A. "If debtor does not obtain such written  
11 consent from AVT or if AVT otherwise revokes its  
12 consent to have the AVT DCMs included in the  
13 purchased assets prior to the hearing to approve the  
14 sale order, the AVT DCMs shall not be included in  
15 the purchased assets, and the purchase price shall  
16 be reduced pursuant to a pro rata allocation of  
17 purchase price for AVT DCMs, which amount shall also  
18 be included on the allocation statement."

19 I am aware of that, yes.

20 Q. Thank you.

21 And would you dispute that this  
22 document, the motion, including its exhibits, were  
23 amended on June 19, 2023, when what was filed as  
24 Document 730 hit the record?

25 MR. KISSNER: Objection. Form.



1 THE WITNESS: Are you pointing to me  
2 something to look at, an amendment here, so I can  
3 confirm that for you?

4 BY MR. HIGGINS:

5 Q. I'm not.

6 I'm asking you if you are aware this  
7 document was amended on June 19, 2023?

8 A. I don't know, off the top of my head, if  
9 this was the final document or if this -- there was  
10 an amendment to it without seeing it.

11 Q. Okay. That makes sense.

12 Would you be surprised to learn that  
13 when this document was amended, this section,  
14 Section 1.9 of the Heller APA, was not changed in  
15 any way?

16 MR. MANN: Objection to form.

17 THE WITNESS: Surprised?

18 BY MR. HIGGINS:

19 Q. Would you be surprised to learn that,  
20 yes.

21 MR. MANN: Objection to form.

22 THE WITNESS: I don't think I would have  
23 surprise or lack of surprise. I think that in  
24 amendments of documents, sometimes paragraphs are  
25 changed and negotiations happen in between, and

1 sometimes they are not. So I can't -- I would not  
2 ever characterize myself as surprised, other than,  
3 you know, in these -- these occurrences, things  
4 sometimes stay the same, sometimes they change  
5 between drafts or amendments.

6 BY MR. HIGGINS:

7 Q. Fair enough.

8 Do you ever recall discussing the  
9 contents of this section, Section 1.9 of the Heller  
10 APA?

11 A. I -- I don't recall the exact --  
12 discussing 1.9 exactly.

13 Q. Do you recall any discussions regarding  
14 Av Tech's -- pardon me, strike that -- AVT's rights  
15 to consent or withdraw consent in these proceedings?

16 A. I have -- originally we had a  
17 conversation with the buyer. The buyer asked  
18 whether this was a lease or a financing. I was -- I  
19 have been advised that he was -- they filed a UCC-1  
20 and a proof of claim as a secured creditor, and you  
21 can take -- and I have advised him to take any  
22 measures that you think make sense, from his  
23 standpoint. And that was probably the last I have  
24 had a conversation on that with anybody.

25 Q. And when you say "the buyer," are you

1 referring to Heller Capital or Genesis Coin --

2 A. Heller, because Genesis Coin is not  
3 relevant for this -- for this part of the asset  
4 purchase.

5 Q. Okay. To make sure I understand what  
6 you just told me, Heller Capital approached you  
7 asking whether or not AVT was a lessor or a  
8 financier in this matter?

9 MR. MANN: Objection to form.

10 BY MR. HIGGINS:

11 Q. Is that correct?

12 A. No. It was brought up in a conversation  
13 about all parties, and there was no approach by  
14 Heller. That is my recollection.

15 Q. Do you recall when approximately that  
16 discussion was had?

17 A. I do not recall.

18 Q. Do you recall if it was before or after  
19 the auction on June 2nd, 2023?

20 A. I don't recall.

21 Q. Do you recall how AVT's DCMs  
22 specifically were marketed leading up to the auction  
23 on June 2nd, 2023?

24 A. We marketed all the collateral together.

25 Q. Am I correct then to assume that the

1 debtor did not differentiate between AVT's DCMs and,  
2 we'll say Enigma's DCMs in its marketing ahead of  
3 the auction on June 2nd?

4 A. Only to the extent that the collateral  
5 was different. The buyer did due diligence on each  
6 type of assets within the collateral pool, and we  
7 classified things and looked at things, whether they  
8 were different models or -- of Cole Kepro or what  
9 type of machines they were, is how the debtor was --  
10 asked us to approach them at the time.

11 Q. Understood. Thank you.

12 These discussions with Heller Capital,  
13 were these over the phone or via e-mail? How were  
14 these had?

15 A. In general, or is there a specific  
16 timeframe you're looking for? In general, we spoke  
17 on the phone.

18 Q. On the phone? Thank you.

19 And I'll ask you just one more time if  
20 you can recall any clarity as to when that  
21 discussion with Heller Capital regarding whether AVT  
22 was a lessor or a financier occurred before or after  
23 the auction. Do you have any milestones to place  
24 that discussion around?

25 MR. KISSNER: Objection to form.

1 THE WITNESS: I have no recollection  
2 there.

3 BY MR. HIGGINS:

4 Q. That's fair enough. Let's step back a  
5 little bit and talk about the auction more  
6 generally.

7 Is it your understanding that Heller  
8 Capital's bid entered at the auction was over each  
9 of the DCMs, including AVT's DCMs?

10 A. Will you rephrase for me, please?

11 Q. Certainly, yeah.

12 Is it your understanding that when  
13 Heller Capital submitted its bid at the auction on  
14 June 2nd, that it was bidding to purchase all of the  
15 debtor's leased or owned DCMs, to include AVT's  
16 DCMs?

17 MR. KISSNER: Objection to form.

18 THE WITNESS: Heller Capital was bidding  
19 originally for 2200 in storage and 3500 that were in  
20 the field.

21 BY MR. HIGGINS:

22 Q. And do those numbers, to your  
23 understanding, include AVT's DCMs?

24 A. They do.

25 Q. Would you be surprised to learn that the

1 debtor first contacted AVT after the auction to ask  
2 whether or not it would consent to including its  
3 DCMs in the sale?

4 MR. KISSNER: Objection to form.

5 THE WITNESS: I don't know when the  
6 debtor contacted AVT originally. I did not have  
7 direct communications with AVT at any time in this  
8 case.

9 BY MR. HIGGINS:

10 Q. Until now. Understood.

11 A. Until now.

12 Q. Do you have any reason to believe,  
13 though, that the debtor contacted AVT before the  
14 auction to ask whether it would consent to its  
15 machines being included in the sale?

16 A. I have no reason to believe or not to  
17 believe that happened prior to the auction, as I did  
18 not have direct contact with AVT.

19 Q. Fair enough.

20 Do you believe that the sale to Heller  
21 Capital would have closed without the AVT DCMs being  
22 included in the sale?

23 MR. KISSNER: Objection to form.

24 THE WITNESS: I think that -- I think  
25 that -- I don't know what Heller Capital's

1 intentions were in terms of the amount, a minimum  
2 amount of machines they were looking to buy. So  
3 whether AVT would be included would affect that or  
4 not, we never had a conversation, if there was a  
5 minimum that they needed.

6 BY MR. HIGGINS:

7 Q. Did you ever discuss with Heller Capital  
8 its intentions regarding AVT's machines in  
9 particular?

10 MR. MANN: Objection to form.

11 THE WITNESS: Can you define  
12 "intentions," please?

13 BY MR. HIGGINS:

14 Q. I'm asking you whether or not you can  
15 offer any clarity as to whether Heller had any  
16 intentions for AVT's machines specifically?

17 MR. KISSNER: Objection to form.

18 THE WITNESS: As I've previously stated,  
19 the assets were marketed with 2200 machines that  
20 were, from the books and records of the company, in  
21 the warehouses, and 3500 in the field.

22 BY MR. HIGGINS:

23 Q. And as we agreed previously, those  
24 numbers do include AVT's DCMs; is that correct?

25 MR. MANN: Objection to form.

1 THE WITNESS: They do --

2 BY MR. HIGGINS:

3 Q. So is it --

4 A. -- to my knowledge, yes.

5 Q. Thank you.

6 So is it fair to say then that Heller  
7 Capital intended to purchase AVT's DCMs when it  
8 placed its bid on June 2nd?

9 MR. KISSNER: Objection to form.

10 THE WITNESS: Again, Heller Capital  
11 was -- intent was to bid -- was to purchase 2200  
12 machines in warehouse and 3500 in the field. I have  
13 no knowledge base of whether Heller Capital  
14 differentiated between for -- differentiated between  
15 machines.

16 BY MR. HIGGINS:

17 Q. All right. Besides the discussion you  
18 had with Heller Capital regarding whether or not AVT  
19 was a lessor, do you recall any other discussions  
20 with Heller Capital where AVT was singled out or  
21 evoked?

22 A. I do not.

23 Q. Okay. We can turn now to the debtor's  
24 surcharge motion. And if I say "surcharge motion,"  
25 do you know what I'm referring to?



1 A. I do.

2 Q. And that's the document filed as  
3 Document 926, filed on July 24th, the motion to  
4 surcharge.

5 A. Can you give me the tab again?

6 Q. I don't believe it's one of the tabs in  
7 front of you.

8 MR. HIGGINS: I could be wrong,  
9 Mr. Kissner, but I don't believe it is.

10 BY MR. HIGGINS:

11 Q. We'll avoid getting into the substance  
12 of that document, as I understand it's not before  
13 you, but I'm gonna ask you some questions about your  
14 understanding of that document.

15 Would you be surprised to learn that --

16 MR. MANN: Can you hold on, Mason?

17 MR. KISSNER: I might have a copy of it  
18 with me.

19 MR. HIGGINS: Oh, thank you.

20 MR. MANN: And Mason, when you're  
21 questioning him about the surcharge, where is this  
22 leading, because he was only appearing here today to  
23 focus on the sale?

24 MR. HIGGINS: I understand that. I'm  
25 seeking to talk about how AVT's characterized in

1 that motion. I believe it's relevant to AVT's  
2 importance to the sale itself.

3 MR. MANN: All right. So it's more just  
4 the contents of this document, not what went on when  
5 the surcharge analysis --

6 MR. HIGGINS: I'm sorry. You're very  
7 hard to hear right now.

8 MR. MANN: So are you only questioning  
9 him on the contents of the motion, or actual like  
10 facts of what went along with the surcharge?

11 MR. HIGGINS: These questions are all  
12 about the contents of that motion.

13 MR. MANN: Well, again --

14 You're fine with that? All right.

15 THE WITNESS: Maybe. You can object if  
16 it doesn't make sense.

17 MR. KISSNER: And by the way, this was  
18 marked yesterday as Exhibit 36 to the James  
19 declaration. I don't know, should we mark this as a  
20 separate exhibit for today?

21 MR. MANN: I feel like for organization  
22 sake, let's put it in as a new exhibit so it goes  
23 chronologically of what was talked about in this  
24 deposition.

25 MR. KISSNER: Okay. So by the way, I

1 think that previously we were discussing Tab 25,  
2 which was the sale motion, which I believe the court  
3 reporter has marked as exhibit -- or 27, rather. I  
4 believe the court reporter has marked that as  
5 Exhibit 7.

6 So I think the surcharge motion would be  
7 Exhibit 8 today.

8 (Exhibit 8 marked.)

9 THE WITNESS: Continue, Mason. I'm  
10 ready.

11 MR. HIGGINS: That was Exhibit 28,  
12 right, Mr. Kissner? It's hard to hear the attorneys  
13 right now.

14 MR. KISSNER: This is Exhibit 8.

15 MR. HIGGINS: Thank you. Exhibit 8.

16 BY MR. HIGGINS:

17 Q. All right. Looking at Exhibit 8, I will  
18 refer you to page -- it's marked as page 1 on the  
19 document. It's the second page, the first page  
20 after the caption. I'll refer to that first  
21 paragraph there.

22 A. Are you talking about preliminary  
23 statement, page 1?

24 Q. Above that, that first paragraph there.  
25 Do you see where, about halfway through

1 the first paragraph, the document lists Genesis  
2 Global Holdco, LLC, Enigma Securities Limited and  
3 AVT Nevada, LP, and then describes those entities as  
4 the secured creditors?

5 A. Correct.

6 Q. Why did the debtor's position change  
7 with regards to whether or not AVT was a secured  
8 creditor?

9 MR. MANN: Objection to form.

10 MR. KISSNER: Objection to form.

11 THE WITNESS: My understanding is -- my  
12 understanding is when we marketed the assets, which  
13 included AVT's, Enigma and Genesis, where -- you  
14 know, they give you simple clarification, that AVT  
15 was a secured creditor.

16 So when I went out and marketed, and we  
17 spent the time, the attention maintaining,  
18 marketing, repairing, and all the expenses that are  
19 associated with this from a period that started on  
20 February 7th till the auction date on the second and  
21 post that, that as the auction came about, that AVT  
22 was a secured creditor that filed a proof of claim  
23 with the court and a UCC-1, thus to me, as a seller  
24 of the asset, they were always considered a secured  
25 creditor.

1 I am not going to tell you why the  
2 motions -- I have no -- I have no thought on why the  
3 motions are different.

4 BY MR. HIGGINS:

5 Q. Understood.

6 As you sit there, does the debtor now  
7 dispute that AVT is a lessor in this proceeding?

8 MR. MANN: Objection to form.

9 THE WITNESS: I'm not in a position to  
10 dispute or not dispute right now. The -- the sale  
11 is closed. The sale has been approved, and from  
12 that basis is the -- AVT has received the benefit  
13 of proceeds.

14 BY MR. HIGGINS:

15 Q. I can reask my question for you.

16 So you are sitting here on behalf of the  
17 debtor Cash Cloud, Inc., are you not?

18 A. I am.

19 Q. Okay. So then as you sit there on  
20 behalf of the debtor, do you now dispute that  
21 contrary to Cash Cloud's original position, AVT is a  
22 lessor in these proceedings?

23 MR. MANN: Objection to form.

24 THE WITNESS: I am -- I am saying  
25 clearly that AVT filed a UCC-1 and a proof of claim

1 as a secured creditor, which from all bases, to my  
2 knowledge, makes AVT a secured creditor.

3 BY MR. HIGGINS:

4 Q. And in stating that, is that a stance  
5 you are taking, that AVT is not a lessor?

6 MR. MANN: Objection to form.

7 THE WITNESS: I am not taking a stance.  
8 I am telling you that AVT filed a proof of claim  
9 with a UCC-1, which makes them a secured creditor.

10 BY MR. HIGGINS:

11 Q. So are you not disputing, then, you're  
12 not denying then that AVT is a lessor?

13 MR. MANN: Objection to form.

14 MR. KISSNER: Objection to form.

15 THE WITNESS: I am going to repeat that  
16 AVT filed a UCC-1 as a secured creditor, thus --  
17 thus the assets were sold as a secured creditor.

18 BY MR. HIGGINS:

19 Q. Understood. We can move on now. I have  
20 one more topic for you today and that's the debtor's  
21 warehouses.

22 So am I correct that there are DCMs  
23 stored in three separate warehouses employed by Cash  
24 Cloud?

25 A. No.

1 Q. Okay. I'll ask you to clarify for me.

2 So how many warehouses did the debtor  
3 employ in these proceedings?

4 A. I will estimate, and not opine on this  
5 as factual. My recollection is there's someplace  
6 between 35 and 50 warehouses that have machines in  
7 them across the country. And I would refer you  
8 to -- I would refer you to, probably, Chris  
9 McAlary's declaration originally, but I'm not quite  
10 sure, but there is absolutely more than three.

11 Q. Okay. And I may have asked that in an  
12 unclear way and I do apologize for that.

13 Can we agree, though, that the debtor  
14 has employed three companies to store its DCMs in  
15 warehouses around the country?

16 A. I'm not -- that was in the preview of  
17 Tanner James.

18 Q. And you have -- and you have no  
19 knowledge of that declaration contents?

20 A. I am not -- I did not read Tanner  
21 James's declaration and I am -- he has been  
22 responsible for the logistics of this company, so I  
23 will not speak on things that I -- are not factually  
24 think -- know are a hundred percent accurate.

25 Q. So you don't have any -- strike that.

1 So you're not prepared today to talk  
2 about the debtor's operations with regards to  
3 storing the DCMs it operates or warehouses?

4 A. I can tell you that, as I said earlier,  
5 the debtor basically has a logistics of about 35 to  
6 50 places to store assets. My -- I'm here to speak  
7 about the sale process and the auction. As I said,  
8 you can -- as you had yesterday, you had Tanner  
9 James you could have spoken about the operations and  
10 the logistics. So I would refer you to Tanner James  
11 if you would like to talk about the logistics which  
12 is part of the surcharge motion.

13 Q. Fair. And I do appreciate that clarity  
14 of what you're going to talk about today.

15 With that being said, I have no further  
16 questions for you. Thank you for your time.

17 A. Mason, nice to meet you. Thank you for  
18 yours.

19 EXAMINATION

20 BY MR. KISSNER:

21 Q. Okay. I'm going to ask you some more  
22 questions, if that's okay, Mr. Moses.

23 Before, you were talking with  
24 Mr. Higgins about what has been marked as Exhibit 7,  
25 Tab 27 in your binder -- you have it in front of



1       you -- which was the sale motion.

2           A.       27?

3           Q.       Yeah. You're there. You got it.

4           A.       This one (indicating)?

5           Q.       Yep.

6           A.       Document 714?

7           Q.       Yes, sir.

8                    Do you recall Mr. Higgins asked you if  
9       Fox Rothschild drafted the APA that was attached as  
10      an exhibit to this?

11          A.       Yeah. Yes, the debtor's counsel and --

12          Q.       Drafted the APA document, that was your  
13      testimony before?

14          A.       Yeah.

15          Q.       Can you turn to -- going by the page  
16      numbers in the upper right-hand corner -- 51 of 66.

17          A.       We're there.

18          Q.       Section 9.09, and can you go down to  
19      subparagraph B. And could you read that to yourself  
20      and let me know when you're done.

21          A.       You said 9.09, sir?

22          Q.       Yep. And then subparagraph B.

23          A.       Okay.

24          Q.       What do you understand that sentence to  
25      mean?

1 A. Nothing.

2 Q. Do you understand that to mean that this  
3 agreement was drafted by both parties to the  
4 agreement?

5 A. I don't know the definition of  
6 "parties."

7 Q. Fair enough.

8 If I were to tell you the parties to  
9 this agreement were Heller Capital and Coin Cloud,  
10 would that sound familiar to you?

11 A. That would --

12 MR. MANN: Objection to form.

13 THE WITNESS: That would seem logical.

14 BY MR. KISSNER:

15 Q. So would you understand this sentence to  
16 suggest that this agreement was drafted by Heller  
17 Capital and the debtor?

18 MR. MANN: Objection to form.

19 THE WITNESS: This agreement was, I  
20 would assume, drafted by all parties involved.

21 BY MR. KISSNER:

22 Q. Okay. So does that refresh your  
23 recollection as to who drafted this APA?

24 A. As I said is, I -- I did not do the  
25 drafting of the APA --

1 Q. Correct.

2 A. -- that my assumption is parties  
3 involved drafted it, but I have no knowledge of who  
4 drafted it together.

5 Q. Okay. But it would be fair to say then  
6 that this wasn't drafted by Fox Rothschild alone,  
7 but perhaps in concert with advisors to Heller,  
8 fair?

9 A. There is typical -- there is typical  
10 drafting between parties, correct.

11 Q. So your understanding would be that this  
12 was drafted by both parties?

13 A. My understanding is that the debtor  
14 would take -- would be the initial drafter and then  
15 work with the purchaser.

16 Q. Okay. Great. That was all I had on  
17 that.

18 Let's go back to -- we were starting to  
19 talk this morning before lunch about the sales and  
20 marketing process, and then this afternoon we're  
21 going to talk about -- a little more about that  
22 process and then the auction.

23 A. Sure.

24 Q. Before we do, before we had taken a  
25 break for about an hour or so, you said that you had

1 a call during that break?

2 A. I did.

3 Q. And that was on a different matter, not  
4 on Cash Cloud?

5 A. That's correct.

6 Q. Other than that call, did you have any  
7 other conversations during your break?

8 A. That was my break. You're not privy to  
9 my break.

10 Q. That's fair.

11 What I'm trying to get at is did you  
12 have any conversations about the substance of your  
13 testimony today during the break?

14 A. I spoke to many different parties during  
15 the break.

16 Q. Right. But did you have any  
17 conversations regarding the substance of your  
18 testimony today during your break?

19 A. I spoke to Paul Huygens and mentioned  
20 that I was testifying.

21 Q. Did you talk about the content of your  
22 testimony today?

23 A. Only that it was on pre-sale process.

24 Q. Okay. All right. We might come back to  
25 that later.

1 A. Okay.

2 Q. All right. So as part of your role with  
3 Province in this engagement, you assisted with the  
4 sales and marketing process for Coin Cloud's assets;  
5 fair to say?

6 A. Absolutely.

7 Q. Would you say you assisted or you  
8 managed the process?

9 A. I managed the process.

10 Q. Did you speak with potential purchasers  
11 as part of managing that process?

12 A. I did.

13 Q. Do you recall about how many you spoke  
14 to?

15 A. Sure. We sent a teaser out to about 48  
16 different parties.

17 Q. Okay.

18 A. We signed, if I recall correctly,  
19 initially 15 -- at least 15 NDAs that were just  
20 specific to the sale process. Sometimes some of  
21 those people would overlap who looked at the  
22 financing of the DIP, who also might have been  
23 interested in the assets, so there might have been  
24 an -- additional parties that we spoke to above the  
25 15 that were under NDA, because they were already

1 involved.

2 Q. Would you say that those parties, as you  
3 phrased it, above the 15 under NDA, would that be  
4 captured in the 48 parties, though --

5 A. They would.

6 Q. -- that you talked to? Okay.

7 And we're not going to go through 15  
8 different conversations, so don't worry about that.

9 A. I'm not.

10 Q. But when speaking with potential  
11 purchasers, what was generally the content of those  
12 conversations? What were those conversations like?

13 A. Every conversation is different.

14 Q. Sure.

15 A. We go -- and it depends. With most  
16 purchasers of assets, you have multiple  
17 conversations, so it's an iterative process. Let's  
18 lay this out.

19 So the first thing you have to always do  
20 with the purchasers, once they get the teaser, is  
21 they have to express interest. The first step of  
22 that process is then let's get them to sign a NDA so  
23 you can have more open conversations besides  
24 describing what you're actually selling. Once you  
25 get that NDA, you usually have a quick -- then you

1 have a conversation.

2 Either myself or management or other  
3 people who are experts would usually be on the phone  
4 with me. Sometimes we start myself. Sometimes it's  
5 myself and a couple of my other colleagues, where we  
6 start to answer questions for them about the assets,  
7 the transactions, what we're selling, access to  
8 diligence, VDRs, how many -- how competitive the  
9 process is, you know, what are the -- how are you  
10 looking to buy? Is this a 363? Is it a plan  
11 sponsor?

12 So everything from structure to business  
13 to anything else that would be on the buyer's mind  
14 would be in those initial conversations.

15 Q. Okay. And so you had at least 15  
16 initial conversations; fair to say?

17 A. Estimated.

18 Q. And probably many multiples of that in  
19 total conversations, right?

20 A. That's correct.

21 Q. Going back to your earlier answer when  
22 you were sort of describing the blocking attack on  
23 those calls, you said one of the things that you  
24 might discuss is 363 sale, plan sponsorship or other  
25 type of transaction; is that right?

1 A. That is correct.

2 Q. Do you recall ever telling any of the  
3 purchasers -- sorry, strike that.

4 Do you recall telling any of the  
5 potentially interested parties that you spoke to  
6 whether the debtor had a preferred transaction  
7 structure?

8 A. We've never talked about a preferred  
9 transaction structure. We referred them to the DIP  
10 documents which had milestones that effectively  
11 described different processes for transactions, but  
12 we have never -- we don't -- Province doesn't have a  
13 preference. We will never have a preference on  
14 transaction structure. What we have a preference on  
15 is for all -- the estate and all creditors is  
16 getting the highest and best value for all  
17 creditors. Hard stop, that's it.

18 So we have no preference on fees. We  
19 have no judgment based on process. We take our  
20 fiduciary responsibilities seriously and that's how  
21 we approach every conversation.

22 Q. Okay. You said a phrase in there,  
23 "highest and best." What does that mean?

24 A. We want to try to get the highest value  
25 we can for all creditors.



1 Q. Does "highest and best" necessarily mean  
2 highest purchase price?

3 MR. MANN: Object as to form.

4 THE WITNESS: I think you're  
5 characterizing a complicated question with a  
6 simple -- with a simple statement, and I don't think  
7 that's correct. When you sell an asset, there are  
8 multiple things. Highest price could be one, form  
9 of consideration could be another, whether it's --  
10 maybe it's going to be -- do they have financing?  
11 Do we think they can close? Do they have diligence?  
12 So when you think about the mosaic of highest price,  
13 highest price includes all those things in order to  
14 have a successful transaction. It's not just a  
15 quantitative measure. It can't be.

16 BY MR. KISSNER:

17 Q. So you would say it's a qualitative  
18 assessment?

19 A. No, it's a quantitative -- like I said,  
20 it's a mosaic. You're trying to get to the highest  
21 price that will have the ability to close.

22 Q. Okay. Why don't we go to Tab 10 in your  
23 binder. I don't think we've marked this one yet so  
24 I think this will be Exhibit 9.

25 (Exhibit 9 marked.)

1 THE WITNESS: That's the one-pager?

2 BY MR. KISSNER:

3 Q. Yeah.

4 Do you recognize this document?

5 A. I do.

6 Q. Can you tell me what it is?

7 A. Bid deadline of April 12th.

8 Q. Would it be fair to say then that this  
9 was prepared on or about -- oh, sorry. Strike that.

10 Do you know when this document was  
11 filed?

12 A. I do not.

13 Q. Can you --

14 A. Other than what it reads up top,  
15 March 30th.

16 Q. So would you agree that this document  
17 was likely prepared on or about March 30th?

18 A. I don't know when it was prepared.

19 Q. Okay. Could you describe to me, in your  
20 own words, what you understand this notice of bid  
21 deadline to be?

22 A. This is a very simple notice that goes  
23 out to all parties in a public forum that basically  
24 identifies the timeline during a sale process or a  
25 plan sponsor process; in this particular case, where

1 we were filing a toggle plan of April 12th as a date  
2 that we would like, initially, term sheets to be  
3 submitted.

4 Q. In your prior experience advising  
5 clients in connection with 363 sales, which we  
6 discussed before, is it typical for a bid deadline  
7 notice like this to be filed publicly?

8 A. Yes.

9 Q. And you said before this was prepared  
10 and filed apparently on or about March 30th, 2023?

11 A. Uh-huh.

12 Q. Do you recall if, around March 30th,  
13 2023, the debtor was in communications with  
14 potential bidders interested in serving as a  
15 stalking horse?

16 A. Not on March 30th. We were in  
17 communications with the eventual stalking horse bid,  
18 but they did not file a term sheet until April 7th.

19 Q. Were you talking with other parties  
20 potentially interested in serving as a stalking  
21 horse?

22 A. We were talking to all parties about  
23 being the stalking horse. Everyone we spoke to, we  
24 had told them they have an equal opportunity, since  
25 the teaser went out on March 1st, if you have the --

1 if you have the right bid and the right structure to  
2 be the initial stalking horse, everyone has an equal  
3 opportunity.

4 Q. How advanced were those discussions, if  
5 you recall?

6 MR. MANN: Objection to form.

7 THE WITNESS: Can you elaborate on the  
8 question?

9 BY MR. KISSNER:

10 Q. Sure. You said that you had discussions  
11 with all parties, since March 1st, about the  
12 potential to serve as a stalking horse, correct?

13 A. Uh-huh.

14 Q. And just curious if you recall how  
15 advanced those discussions were?

16 MR. MANN: Objection to form.

17 BY MR. KISSNER:

18 Q. How far along were you in those  
19 discussions? I'll rephrase.

20 A. Every party was different, is -- at a  
21 different point in time.

22 Q. That's fair.

23 By March 30th, had you selected a  
24 stalking horse?

25 A. We can't select a stalking horse without

1 a term sheet.

2 Q. And by March 30th, had you received a  
3 term sheet to serve as a stalking horse from any  
4 party?

5 A. My recollection was April 7th was the  
6 first term sheet, but I'm happy to go back for you  
7 through the records to figure out if it came in  
8 earlier, but my recollection is April 7th.

9 Q. Okay. That's fine. We'll probably get  
10 there today, so no need.

11 Now, this morning you were telling me a  
12 little bit about what a stalking horse is. Do you  
13 remember that?

14 A. I do.

15 Q. And would it be a fair summary of your  
16 testimony that a stalking horse acts as the initial  
17 bidder in the process?

18 MR. MANN: Objection to form.

19 THE WITNESS: Yeah. The stalking horse  
20 is the initial bidder that typically sets a floor,  
21 to try to create a competitive environment to get a  
22 higher bid in the process.

23 BY MR. KISSNER:

24 Q. In your experience, does having a  
25 stalking horse send a signal to the market?

1 MR. MANN: Objection to form.

2 THE WITNESS: Yes.

3 BY MR. KISSNER:

4 Q. What kind of a signal does it send?

5 A. I think it sends a signal that this is  
6 going to be a competitive process.

7 Q. Now, does this notice that was filed  
8 with the court, does this mention a proposed  
9 stalking horse bidder for the debtor's assets?

10 A. No.

11 Q. Do you think that sent a signal to the  
12 market?

13 A. No.

14 Q. You don't think that somebody reading  
15 this would -- strike that.

16 A. This is a standard bid deadline. It  
17 tells -- it basically incentivizes buyers to have  
18 their term sheets in sooner, thus creating a  
19 competitive environment in order to try to realize  
20 higher values. Very standard in the business.  
21 Happens every 363 process.

22 Q. Would you say that it's standard for bid  
23 deadline notices such as this to announce a stalking  
24 horse?

25 A. No. I don't think it's standard.

1 Q. Okay. We're going to turn to Tab 45 in  
2 your binder and I'm going to ask that that be marked  
3 as Exhibit 10.

4 (Exhibit 10 marked.)

5 MR. KISSNER: And by the way, is  
6 everybody able to hear us?

7 (Interruption in proceedings.)

8 BY MR. KISSNER:

9 Q. All right. Mr. Moses, do you recognize  
10 Exhibit 10?

11 A. I do not.

12 Q. Could you review it?

13 A. Okay.

14 Q. Can you tell me what it appears to be?

15 A. It says, "Term sheet for Cash Cloud  
16 plan" of re-org.

17 Q. What does that mean to you?

18 A. Honestly, it doesn't mean a lot. This  
19 looks like it is a general, early stage process term  
20 sheet of trying to figure out structure of a plan.

21 Q. A plan for reorganization?

22 A. That's what it says.

23 Q. Did you -- oh, go ahead.

24 A. No, that's it. That's what it says.

25 Q. Did you draft this document?

1 A. I did not.

2 Q. Do you know who did?

3 A. I do not.

4 Q. Do you have a guess?

5 MR. MANN: Objection to form.

6 THE WITNESS: I don't guess.

7 BY MR. KISSNER:

8 Q. But if you had to?

9 MR. MANN: Objection to form.

10 THE WITNESS: I don't guess.

11 BY MR. KISSNER:

12 Q. Do you know about when this -- strike

13 that.

14 Do you know on or about which date this

15 document was created?

16 A. I only know exactly what you just said.

17 Q. Okay. Well, if we turn to page 1, which

18 is the cover e-mail, and if you look up at the top

19 at the "sent" line, there's a date there. Could you

20 read that?

21 A. April 6th.

22 Q. Does that refresh your recollection as

23 to when this document was created?

24 A. No.

25 Q. No? Okay.



1 And before, you said that you didn't  
2 know who drafted this document?

3 A. I do not know -- I will not say who  
4 authored this document because I do not know.

5 Q. Do you have any recollection if this was  
6 approved by the DIP lender?

7 A. I don't have any recollection.

8 Q. Do you have any recollection if this was  
9 approved by any potential bidder for the debtor's  
10 assets?

11 A. I have no recollection.

12 Q. Okay. Do you have an understanding of  
13 what the purpose of this document was?

14 MR. MANN: Objection to form.

15 THE WITNESS: I have no knowledge base  
16 of what the purpose was.

17 BY MR. KISSNER:

18 Q. Okay. Well, before, you said this  
19 appears to be a term sheet for a plan of  
20 reorganization, correct?

21 A. But it's a term sheet for plan -- but  
22 it's a early, early draft, it looks like.

23 Q. That's fair.

24 A. It looks like work product.

25 Q. Would it be fair to characterize this as

1 a proposal?

2 MR. MANN: Objection to form.

3 THE WITNESS: No.

4 BY MR. KISSNER:

5 Q. How would you characterize it, then?

6 A. Early work product.

7 Q. Turning back to the first page of the  
8 cover e-mail, can you tell me who this was sent by?

9 A. Paralegal for Fox Rothschild.

10 Q. Okay. And you don't have to read them  
11 into the record, but can you look at the individuals  
12 listed in the "to" field?

13 A. Sure.

14 Q. And let me know when you're done.

15 A. I am done.

16 Q. Can you tell me if you recognize any of  
17 those names?

18 A. I do.

19 Q. Can you tell me -- for any that you do  
20 recognize, can you tell me who you understand them  
21 to be?

22 A. I understand that these are lawyers for  
23 the committee. It looks to me this is the  
24 consultation party group.

25 Q. And who are the consultation parties?

1 A. Enigma, Genesis, the UCC and the DIP  
2 lender -- whether he's formally in it, the  
3 consultation, but the DIP lender is always a  
4 consultation party.

5 Q. And "UCC," you mean the committee,  
6 correct?

7 A. I do.

8 Q. And where did you get that phrase  
9 "consultation parties" from?

10 A. That's what that group is always  
11 referred to me as.

12 Q. Do you have any understanding as to why  
13 a paralegal from Fox Rothschild would be sending a  
14 term sheet for a plan of reorganization to the  
15 consultation parties?

16 MR. MANN: Objection to form.

17 THE WITNESS: I do not.

18 BY MR. KISSNER:

19 Q. And turning back to the term sheet  
20 itself, do you see the top row of the term sheet?  
21 Third column where it says "proposed plan  
22 treatment," do you see that?

23 A. Uh-huh. Okay.

24 Q. Do you have an understanding as to why  
25 it would say "proposed plan treatment" there?

1 MR. MANN: Objection to form.

2 THE WITNESS: As I repeatedly have said,  
3 it looks like a working draft.

4 BY MR. KISSNER:

5 Q. Okay. I guess what I'm trying to get at  
6 is you said before that this -- it would be unfair  
7 to characterize this as a proposal, right? But this  
8 was a document sent by the debtor to creditors that  
9 included proposed plan treatment, fair?

10 A. That is correct.

11 Q. So I guess I'd ask, do you still think  
12 it would be unfair to characterize this as a  
13 proposal?

14 MR. MANN: Objection to form.

15 THE WITNESS: What I'm saying is that  
16 this looks like an early draft to begin to gestate a  
17 plan. The difference between a proposal and a  
18 working draft, to begin to put something -- ideas  
19 together versus a formal proposal. They are  
20 massively different things.

21 BY MR. KISSNER:

22 Q. Can you tell me a little bit about how  
23 those things would differ then?

24 A. This looks like a draft so people can  
25 begin to think through what a plan of re-org would

1 look like.

2 Q. Sure. But you said that an early draft  
3 is different from a formal proposal, so I guess I'm  
4 just trying to better understand what that  
5 difference would be.

6 A. Well, it would be characterized as a  
7 formal proposal. This doesn't look like it's  
8 characterized that to me. I have not seen this in  
9 this form before, but as a characterization it  
10 doesn't look like a formal proposal to me.

11 Q. Do you think -- strike that.

12 Do you think the distinction between a  
13 early working draft and a formal proposal is  
14 significant?

15 MR. MANN: Objection to form.

16 THE WITNESS: Yes.

17 BY MR. KISSNER:

18 Q. Could you describe what the significance  
19 of that distinction is?

20 A. An early draft is just an early draft,  
21 subject to change. Every early draft is subject to  
22 material change.

23 Q. Would you say, by contrast, a formal  
24 proposal is less subject to change?

25 A. A formal proposal is basically -- is

1 something that has been vetted and is being proposed  
2 formally. An early draft is something that's  
3 subject to material change based on status of the  
4 case.

5 Q. I see.

6 So the distinction that you're drawing  
7 is that one is less firm than the other; is that  
8 fair?

9 MR. MANN: Objection to form.

10 THE WITNESS: No. No. I'm drawing  
11 exactly what I said to you, that there is a  
12 difference in drafts and early proposals and early  
13 gestation of ideas in a case, than formal proposals.

14 BY MR. KISSNER:

15 Q. Okay. Maybe we'll just agree to  
16 disagree as -- on all of that, but --

17 A. That's fine.

18 Q. -- it's enlightening.

19 Do you know that under -- and I'll call  
20 it a draft because I'm not -- that's fine, because I  
21 don't want to get into an argument about what it is.

22 Under this draft, do you know how much  
23 Enigma would have received on account of its claim?

24 A. I do not.

25 Q. Why don't we look at page 2 of the chart

1 at the very bottom. And do you see where it says  
2 "Enigma secured claim"? And can you read that to  
3 yourself and let me know when you're done.

4 A. I am not going to calculate what Enigma  
5 would receive based on this text.

6 Q. I'm not asking to you calculate  
7 anything, I'm just asking you to read it to yourself  
8 and let me know when you're done.

9 A. Okay. I'm aware of what this is.

10 Q. Can you tell me what you understand this  
11 to mean?

12 A. This looks like Enigma is going to  
13 receive, based on the language here, under a plan of  
14 reorganization, take-back paper that has certain  
15 characteristics associated with them including early  
16 call dates.

17 Q. Okay. Let's break that down a little  
18 bit.

19 When you say "take-back paper," what  
20 does that mean?

21 A. Typically in a restructuring, a form of  
22 consideration for a creditor could be another form  
23 of debt.

24 Q. So a new debt?

25 A. Take-back paper -- yes. A new security

1 is a typical form of take-back paper.

2 Q. In a 363 sale, would it be typical for  
3 somebody to get take-back paper or no?

4 A. A 363 sale is not a plan of  
5 reorganization. They are two separate and  
6 distinct --

7 Q. Right.

8 A. -- characteristics --

9 Q. Sorry, I did not mean to cut you off.

10 A. In a 363, you're selling assets. In a  
11 plan, you're reorganizing a company.

12 Q. So it would not be typical on a 363 for  
13 there to be take-back paper, right?

14 A. That's correct.

15 MR. MANN: Objection to form.

16 THE WITNESS: But it can happen.

17 BY MR. KISSNER:

18 Q. And then you said "early call dates."  
19 Can you explain what that means?

20 A. That means that there are periods of  
21 time -- every security that's a debt security has a  
22 call schedule. It's that simple, they just have a  
23 call schedule.

24 Q. Can you elaborate on that?

25 MR. MANN: Objection to form.



1 THE WITNESS: Not really.

2 BY MR. KISSNER:

3 Q. I guess, what does it mean to call, in  
4 that context?

5 A. "Call" means a security can be taken out  
6 at a certain point in time at a certain price.

7 Q. So repaid?

8 A. Correct.

9 Q. Do you have any idea -- strike that.

10 Do you know the amount of take-back  
11 paper Enigma would have received under this draft?

12 MR. MANN: Objection to the form.

13 THE WITNESS: It doesn't specify, but it  
14 does say that "receive the Enigma secured note in  
15 the amount of the Enigma secured claim." Reading  
16 text simply, it says "the amount of secured claim."

17 BY MR. KISSNER:

18 Q. Do you understand that to suggest that  
19 there would be a reduction in principal from the  
20 amount owed to Enigma prior to the case?

21 MR. MANN: Objection to form.

22 THE WITNESS: That's not what it says  
23 here.

24 BY MR. KISSNER:

25 Q. Okay. But pursuant to a early call

1 schedule, if it was repaid early, it would be repaid  
2 for less than the principal amount, fair?

3 MR. MANN: Objection to form.

4 THE WITNESS: Correct.

5 BY MR. KISSNER:

6 Q. Do you have any idea what happened with  
7 this draft after it was shared with the parties?

8 A. Yes.

9 Q. Could you just explain to me or describe  
10 it to me?

11 A. The April 7th -- I think, or April 6th  
12 when you see this draft, was early stages in the  
13 operational history of the company from the  
14 advisor's perspective. Over a series of time we  
15 have realized that the operations of this company  
16 were significantly worse than we could have actually  
17 thought they would be.

18 During that time period, they lost at  
19 least two licenses, Florida and New Mexico, which  
20 had to be shut down. We had significant software  
21 problems. We had revenue go from weekly 5 million  
22 to like two and a half, basically 50 percent of  
23 reduction. We were hemorrhaging cash.

24 And it is my -- I don't know why this  
25 was -- effectively, this particular draft, one way,

1 but it became a lot harder for the company to  
2 support additional debt capacity in a  
3 reorganization, you know, as time went on.

4 So I don't know why particularly this  
5 went away, but I will tell you that, as part of our  
6 process of evaluation, things change in this company  
7 pretty quickly, which then cause, as I said to you,  
8 draft term sheets to -- always can materially  
9 change.

10 Q. Okay. You said that things change  
11 pretty quickly, right?

12 A. Uh-huh.

13 Q. Do you know where -- strike that.

14 Do you know approximately when things  
15 began to change pretty quickly?

16 A. I can't put an exact date on it for you,  
17 to be honest.

18 Q. Do you know if it was in April of 2023?

19 A. We -- in April, we were still -- we were  
20 still finishing the plan in terms of the company's  
21 operational outlook. So I can tell you that it was  
22 not -- we did not have a firm opinion, I did not --  
23 on April 6th of where we were going to end up as a  
24 company at that point.

25 Q. Had things changed pretty quickly by

1 May 2023?

2 A. I'd need to go back and check the date  
3 for you on the software issue and on the license  
4 issue. I'm happy to get back to you. I do not know  
5 those dates off the top of my head.

6 Q. Fair enough.

7 And I apologize, when you said "the  
8 software issue," to what does that refer? And I  
9 might have just forgotten.

10 A. The CCOS has had significant operational  
11 problems for many years --

12 Q. Okay.

13 A. -- So we continuously had operational  
14 problems with CCOS.

15 Q. Can you describe some of those?

16 A. Not -- basically not working with  
17 OptConnect correctly, you know, having basically  
18 software issues there; not recognizing the cash  
19 correctly; not -- you know, basically not working  
20 well at the actual DCM basis. So these were all  
21 things that Chris was working on continuously to  
22 improve.

23 Q. We'll talk about those in a sec.

24 Do you know if things had changed by  
25 June 2023?

1 A. Yes.

2 Q. Okay.

3 A. Things continued to get worse from April  
4 through the auction date. Every -- every single  
5 phase of that, things would continue to decelerate,  
6 not accelerate.

7 Q. Who's OptConnect?

8 A. OptConnect is the telecom provider.

9 Q. So they provide Internet access to the  
10 DCMs?

11 A. Yeah.

12 Q. And then you mentioned that one of the  
13 issues that you were having is the machines were not  
14 correctly recognizing cash; is that correct?

15 A. That's correct.

16 Q. To your knowledge, what does that mean?  
17 What's the consequence of not recognizing cash?

18 A. Effectively, there are risks knowing  
19 what your current cash balances are in terms of  
20 transaction volume. So when dollars go in and they  
21 recognize \$80 instead of a hundred, you know, your  
22 revenue's going to be lower when you reconcile.

23 Q. So all of these issues that we've been  
24 talking about, did that, in your opinion, impact the  
25 ability to consummate a plan of reorganization?

1 A. No.

2 Q. No. Okay.

3 All right. We're going to go back to  
4 Tab 11 in your binder, which was marked earlier as  
5 Exhibit 6.

6 And I believe you talked about this  
7 document with Mr. Higgins for a bit, so I'm going to  
8 try and not repeat anything that he said, but if I  
9 do, please don't hold it against me. Okay?

10 A. Okay. I think I have the right  
11 document.

12 Q. And it's document number 392 at the top.

13 A. Is that the engagement letter, again?

14 MR. MANN: You're on Tab 9. Go to --

15 MR. KISSNER: Oh, yeah, Tab 11, I'm  
16 sorry.

17 THE WITNESS: You said 6, yeah. Sorry.

18 BY MR. KISSNER:

19 Q. It's Tab 11, Exhibit 6. It's a screwy  
20 system.

21 A. Okay. No problem.

22 Q. And can you remind me, what was this  
23 document, again?

24 A. Auction and bidding procedures, the bid  
25 procedures.

1 Q. And this was filed with the bankruptcy  
2 court, correct?

3 A. It is.

4 Q. And in your experience advising on 363  
5 sale processes, it's typical for a motion like this  
6 to be filed with the bankruptcy court, fair?

7 A. Bid procedures are normal course of  
8 business.

9 Q. And I won't make you read the whole  
10 thing, but I'm just going to ask, if you recall,  
11 does this document indicate that there was a  
12 stalking horse for the debtor's assets?

13 A. I don't recall.

14 Q. Why don't we turn to page 2, which in  
15 the upper right-hand corner it says "page 3 of 51."

16 A. Yes.

17 Q. And can you look at the chart in the top  
18 row and read to me what it says?

19 A. "Deadline for selecting designated  
20 stalking horse."

21 Q. And what's the date next to that?

22 A. April 21st.

23 Q. And on or about which date was this  
24 document filed?

25 A. Why don't you just enter it for the

1 record, 4/7/23.

2 Q. Okay. So does that refresh your  
3 recollection as to whether or not this document  
4 indicated that a stalking horse had been selected?

5 MR. MANN: Objection to form.

6 THE WITNESS: My recollect -- I did  
7 not -- we did not have a stalking horse selected in  
8 this document.

9 BY MR. KISSNER:

10 Q. But a stalking horse was eventually  
11 selected, right?

12 A. Yes.

13 Q. Do you know about when that was?

14 A. I don't recall.

15 Q. But it was after the debtor sought  
16 approval of its bid procedures, right?

17 A. I don't recall.

18 Q. Well, we said that these were the bid  
19 procedures that were filed with the court, right,  
20 and they were filed on April 7th?

21 A. Yes.

22 Q. And the deadline to select a stalking  
23 horse was April 21st.

24 So would it be fair to say that the  
25 debtor did not seek approval of the stalking



1 horse -- strike that.

2 Is it fair to say that the debtor had  
3 not selected a stalking horse at the time the bid  
4 procedures motion was filed?

5 A. I don't recall the timing.

6 Q. Okay. Do you have reason to disagree  
7 with the statement that the debtor did not select a  
8 stalking horse until after the bid procedures were  
9 filed?

10 MR. MANN: Objection to form.

11 THE WITNESS: I don't recall the timing,  
12 no matter how many times you say the same sentence.

13 BY MR. KISSNER:

14 Q. I guess I'm a little confused, because  
15 we have the bid procedures motion here, right?

16 A. All I'm saying is I don't recall the  
17 exact date of the stalking horse selection.

18 Q. That's fair.

19 And I guess --

20 A. You're asking me whether it was done  
21 before the bid procedures, after the bid procedures  
22 or before the 21st. I am telling you I don't recall  
23 the exact date of the selection of the stalking  
24 horse.

25 Q. Got it. I think I understand.

1                   So you're saying it could be that the  
2     debtor had selected a stalking horse, but just  
3     didn't announce it in this motion?

4                   MR. MANN: Objection to form.

5                   THE WITNESS: I am not saying that at  
6     all. I am just saying I don't recall.

7     BY MR. KISSNER:

8           Q.        Okay. In your experience advising  
9     parties in connection with 363 sales, is it typical  
10    for a stalking horse to be selected by the time the  
11    bid procedures are filed?

12           MR. MANN: Objection to form.

13           THE WITNESS: Typically, it is after the  
14    bid procedures, but every -- every situation is  
15    different.

16    BY MR. KISSNER:

17           Q.        Okay. Let's turn to Tab 12, which I'm  
18    going to ask the court reporter to mark as  
19    Exhibit 11.

20                   (Exhibit 11 marked.)

21    BY MR. KISSNER:

22           Q.        Do you recognize this document?

23           A.        I do. It's my declaration in support of  
24    debtor's -- approving auction and bidding  
25    procedures.

1 Q. So fair to say that you're familiar with  
2 this document?

3 A. I did. I am.

4 Q. Let's turn to the second page.

5 A. I am on the second page.

6 Q. Could you just read paragraph 4 to  
7 yourself real quick and let me know when you're  
8 done.

9 A. I am done, sir.

10 Q. And before, you were -- I believe you  
11 mentioned a teaser that had gone out. Is this the  
12 teaser that you were talking about before?

13 A. Yes.

14 Q. Okay. And so Province had already sent  
15 out a teaser to the market by the time this  
16 declaration was filed; fair to say?

17 A. If I remember correctly, March 1st.

18 Q. Okay. Great.

19 Let's turn to Tab 9, which we'll mark as  
20 Exhibit 12.

21 (Exhibit 12 marked.)

22 BY MR. KISSNER:

23 Q. Do you recognize this document?

24 A. Sorry. I might be on 8. Oh, the  
25 teaser?

1 Q. Yeah.

2 Do you recognize it?

3 A. I've seen this document.

4 Q. Okay. And is this the marketing teaser  
5 that's referred to in your declaration and that you  
6 were talking about before?

7 A. This is the teaser we sent out on  
8 March 1st.

9 Q. And if you look at page 3, it's the page  
10 that says "Executive Summary" at the top.

11 A. Sure.

12 Q. We'll stay there.

13 But before we talk about it, just to be  
14 sure, did you create this document?

15 A. Tanner James created this document, and  
16 the rest of the Province staff.

17 Q. Okay. Do you have any reason to believe  
18 that this document isn't true and accurate?

19 A. This document relies a hundred percent  
20 on company books and records and testimony of Chris  
21 McAlary. This was not a document that was created  
22 by Province -- by their information. This is books  
23 and records of the company and Chris McAlary.

24 Q. But subject to that caveat, at the time  
25 this was prepared you didn't have any reason to

1 believe that anything in here was false, right?

2 A. As I've said, this was prepared by Chris  
3 McAlary and the company, with the help, assistance  
4 of Province, based on their books and records.

5 Q. Sure. And that's all in this disclaimer  
6 here.

7 I'm just making sure, just as  
8 professionals, that you didn't have any knowledge --  
9 actual knowledge, at the time, that anything in here  
10 was incorrect?

11 A. As I've said to you, we relied on Chris  
12 McAlary and the books and records of the company.

13 Q. I understand that.

14 But do you understand that there's a  
15 distinction between relying on information and  
16 having actual knowledge that information may or may  
17 not be correct?

18 A. Again, we relied on the books and  
19 records of the company and Chris McAlary.

20 Q. Did you have actual knowledge, at the  
21 time, that the books and records and Chris McAlary  
22 were incorrect?

23 MR. MANN: Objection to form.

24 THE WITNESS: Again, we relied on the  
25 books and records provided by Chris McAlary and the

1 company.

2 BY MR. KISSNER:

3 Q. We can do this all day until you answer  
4 the question.

5 A. I did.

6 MR. MANN: It's asked and answered.

7 THE WITNESS: It's asked and answered.

8 BY MR. KISSNER:

9 Q. Okay. I just don't understand why you  
10 can't tell me if you had actual knowledge, at the  
11 time that this was created, that anything in here  
12 was false, that's all.

13 A. What we are telling you is, as every  
14 advisor, we are relying on information from books  
15 and records of the company. We are also relying on  
16 the CEO Chris McAlary. That is what goes into this  
17 document.

18 Q. Okay. Do you understand the distinction  
19 between relying on documents and having actual  
20 knowledge of the truth of the documents?

21 A. Everything that goes in is relied upon  
22 by a third party. We can do this all day, but we  
23 rely on books and records of -- and the CEOs to  
24 basically create all these documents.

25 Q. You said you thought this was created

1 around March 1st?

2 A. No. I told you this was sent out as a  
3 teaser around March 1st.

4 Q. Do you know when it would have been  
5 created?

6 A. Prior to that. Since the beginning of  
7 the case, whenever we -- I actually don't know the  
8 date that it started. But prior to that, obviously.

9 Q. And in your prior declaration, I think  
10 it says that this was sent to approximately 48  
11 parties, fair?

12 A. Fair.

13 Q. If you look at the bottom of page 3, the  
14 lower right-hand corner, and it's the paragraph in  
15 bold beginning "initially," and just read it to  
16 yourself.

17 A. Uh-huh.

18 Q. And then do you see the sub bullet  
19 beneath that, beginning "as of February 23rd," do  
20 you see that?

21 A. I do.

22 Q. So would it be fair to say that this  
23 document was likely created in or after  
24 February 2023?

25 A. It is likely it was created in or after

1 February '23.

2 Q. Okay. And then you've read it before to  
3 yourself. Could you just read for the record the  
4 sentence starting "initially"?

5 A. "Initially, Coin Cloud is seeking a plan  
6 of reorganization co-sponsor willing to provide exit  
7 financing in the form of new equity capital or debt  
8 refinancing, but is open to alternative proposals."

9 Q. In your own words, what do you  
10 understand that sentence to mean?

11 A. It means that, at this point in time of  
12 the case, the DIP lender had certain milestones.  
13 Those milestones, basically, in the beginning, gave  
14 us time to try to reorganize the company as a going  
15 concern. This is basically signaling to the  
16 marketplace that we are trying to reorganize as a  
17 going concern with a plan sponsor. Clearly, if  
18 other parties who are interested in this company  
19 have other ideas, we will obviously consider  
20 everything.

21 Q. So at the time you sent this out, on or  
22 about March 1st, the company was still pursuing a  
23 plan sponsorship transaction?

24 A. The CEO, Chris McAlary, was hoping to  
25 reorganize his company and we were working toward



1     trying to get a plan of reorganization together.

2           Q.     Did there come a time that you stopped  
3     attempting to pursue a plan of reorganization  
4     transaction?

5           A.     As you see in the disclosure statement,  
6     we -- and early on, is we pursued a toggle plan.  
7     And at all times we marketed this and gave anybody  
8     who was potentially interested in this company the  
9     option to be a plan sponsor, and then eventually, if  
10    they had another structure, whether it was a 363 or  
11    otherwise, they had an option.

12                   There was never anything off the table  
13    for any potential investor into the company.

14           Q.     And the auction, that was on June 2nd,  
15    right?

16           A.     Correct.

17           Q.     Do you remember the auction?

18           A.     I do.

19           Q.     It was long, right?

20           A.     I sat in a chair in New York City for  
21    12 hours.

22           Q.     I sat in a hotel lobby in London until  
23    5:30 in the morning --

24           A.     Understood.

25           Q.     -- with my wife, on her birthday.

1 Would it be fair to say that up until  
2 the auction that occurred on June 2nd, the company  
3 was still open to pursuing a plan sponsorship  
4 transaction?

5 A. As I said, we were looking at every type  
6 of transaction possible --

7 Q. Sure. So you --

8 A. -- including at the auction.

9 Q. Okay. So at the auction, the company  
10 was still soliciting interest -- strike that.  
11 That's a bad question.

12 At the auction, the company was still  
13 willing to consider a plan sponsorship transaction?

14 A. The company was always willing to  
15 basically consider anything that realized the best  
16 outcome for the company.

17 Q. So let's go back to your declaration,  
18 which was Tab 12. And that was your declaration  
19 dated April 7th. And in paragraph 4, we were  
20 discussing, and you also seemed to --

21 A. Do I have the right tab again? Is it  
22 12?

23 Q. Yes.

24 A. Paragraph 4?

25 Q. Yeah.

1 Paragraph 4 says, and I think you seemed  
2 to recall earlier, that you contacted about 48  
3 potentially interested parties; is that correct?

4 A. That's what it says.

5 Q. Do you recall if you contacted any  
6 additional parties after April 7th?

7 A. I am sure we contacted additional  
8 parties as we received inbound phone calls.

9 Q. Do you have any sense of how many that  
10 would have been, ballpark?

11 A. Five to ten.

12 Q. Five to ten.

13 Now, did you receive -- strike that.

14 You said eventually you guys secured a  
15 stalking horse, right?

16 MR. MANN: Objection to form.

17 THE WITNESS: Yeah, we had a stalking  
18 horse bid.

19 BY MR. KISSNER:

20 Q. So it would be fair to say that --

21 A. Which was approved, just so you know, by  
22 Enigma, which is your client, Genesis and the  
23 consultation parties, just to be clear for the  
24 record that everything you're talking about,  
25 teasers, had all been approved by the consultation

1 parties.

2 Q. Okay. Thank you for clarifying that for  
3 the record.

4 Since you were successful in signing up  
5 a stalking horse, is it fair to say that you  
6 received some bids from people interested in being a  
7 stalking horse?

8 A. We received multiple term sheets before  
9 we selected the final stalking horse.

10 Q. Okay. Do you have any recollection of  
11 about how many term sheets?

12 A. I do.

13 Q. How many?

14 A. We received about four term sheets.

15 Q. About four term sheets?

16 A. Yes. Not necessarily all qualified  
17 bidders based on the bid procedures, but we received  
18 four term sheets.

19 Q. Okay. We'll look at a couple of them,  
20 and as we do so we can talk about qualifications and  
21 otherwise. Sound good?

22 A. Works for me.

23 Q. Okay.

24 MR. KISSNER: Is everybody good, by the  
25 way? I'm sort of going to get into a -- we're going

1 to walk through some documents.

2 Okay. Great. Let's go to Tab 13. And

3 I'm going to ask this be marked as Exhibit 13.

4 That's easy.

5 (Exhibit 13 marked.)

6 BY MR. KISSNER:

7 Q. Do you recognize this document?

8 A. I do.

9 Q. Can you describe it to me?

10 A. It is a proposal from Aetherial Wolf.

11 Q. Who's Aetherial Wolf?

12 A. To this day, I'm not sure.

13 Q. Did you ever talk to any representative  
14 of Aetherial Wolf?

15 A. We did. I can't recall the gentleman's  
16 name, but we spoke to the -- we pursued this like we  
17 would any other term sheet and had a conversation  
18 with the Aetherial Wolf group.

19 Q. Was it a gentleman named Don Greetham?

20 A. That's exactly who it was.

21 Q. Can you describe your conversations with  
22 Mr. Greetham?

23 A. We asked him to walk us through his term  
24 sheet, like we do every time we receive a term  
25 sheet, so that we can gain knowledge base of all of

1 the details of their term sheet.

2 Q. How would you describe the tone of those  
3 conversations?

4 A. Normal course.

5 Q. Normal course?

6 How many conversations do you think you  
7 had with Mr. Greetham?

8 A. I'd say no more than two, is my  
9 recollection.

10 Q. Okay. So you had two conversations.

11 And I realize this was a couple months  
12 ago, so it's always perfectly fine to just say "I  
13 don't recall."

14 A. Sure.

15 Q. Do you remember the first conversation  
16 you had with Mr. Greetham?

17 A. I don't recall the details of it.

18 Q. Okay. Do you remember anything from it?

19 A. I remember leaving him with a question  
20 to provide proof of funds.

21 Q. Did you leave him with any other  
22 questions?

23 A. Not that I recall.

24 Q. Did you have any conversations with  
25 folks at Province or the debtor about your

1 conversation with Mr. Greetham?

2 A. I think it was a group call with  
3 Mr. Greetham. There was -- there was always  
4 multiple parties from Province probably on it.

5 Q. What did you think of Mr. Greetham?

6 MR. MANN: Objection to form.

7 THE WITNESS: I have no opinion of him.  
8 I don't know him. That was the first conversation  
9 I've ever had.

10 BY MR. KISSNER:

11 Q. What did you think about -- strike that.

12 When you had a conversation with

13 Mr. Greetham -- strike that.

14 How did that first conversation with  
15 Mr. Greetham come about?

16 A. We received the term sheet.

17 Q. Oh, from Aetherial Wolf?

18 A. (Nods head in the affirmative.)

19 Q. What did you think of the term sheet?

20 A. It -- the plan of reorganization did not  
21 seem realistic.

22 Q. And when we're talking about the term  
23 sheet, that's the document in front of you that's  
24 marked as Exhibit 13, right?

25 A. Uh-huh.

1 Q. Okay. Let's talk about your second  
2 conversation with Mr. Greetham. Tell me a little  
3 bit about that.

4 A. I don't even recall. I don't recall it.  
5 He never -- we never received proof of funds from  
6 Mr. Greetham.

7 Q. Do you know what you talked about with  
8 him in that second conversation?

9 A. I don't recall. Like I said, if we had  
10 one or two, I don't even recall the second  
11 conversation.

12 Q. Do you recall the tone or tenor of that?

13 MR. MANN: Object to form.

14 THE WITNESS: I don't even recall the  
15 conversation in any way.

16 BY MR. KISSNER:

17 Q. Sitting here today, do you have anything  
18 you'd like to say about Mr. Greetham?

19 MR. MANN: Objection to form.

20 THE WITNESS: I have no knowledge base  
21 on Mr. Greetham other than that conversation, my  
22 first conversation.

23 BY MR. KISSNER:

24 Q. Okay. Let's talk about this term sheet  
25 a little bit.



1                   So you received this term sheet from  
2   Aetherial Wolf or on behalf of Aetherial Wolf,  
3   right?

4           A.       Uh-huh.

5           Q.       Do you know who developed it?

6           A.       Nope.

7           Q.       Probably Aetherial Wolf?

8                   MR. MANN: Objection to form.

9                   THE WITNESS: I have no knowledge of  
10   who, other than that it was provided.

11   BY MR. KISSNER:

12           Q.       Now, does this set forth a particular  
13   transaction?

14                   MR. MANN: Objection to form.

15                   THE WITNESS: This basically sets forth  
16   two particular transactions, a plan of  
17   reorganization or, effectively, a purchase of the  
18   debtor's assets.

19   BY MR. KISSNER:

20           Q.       Would you characterize this as a  
21   proposal?

22                   MR. MANN: Objection to form.

23                   THE WITNESS: I would characterize this  
24   as a term sheet of a proposal.

25    ///

1 BY MR. KISSNER:

2 Q. Okay. We were talking before a little  
3 bit about the distinctions between a draft and a  
4 final proposal.

5 Where on that spectrum would you put  
6 this?

7 A. This would have been an initial proposal  
8 from a third party that effectively begins the  
9 discussion purposes around getting to a transaction.

10 Q. So a little more than a draft, but not  
11 quite a final proposal, fair?

12 A. I would say that any initial proposal is  
13 an initial proposal, it's not a draft. It doesn't  
14 mean it's a final proposal, it just means it's not a  
15 draft, it's an initial proposal.

16 Q. Now, you said that this term sheet --  
17 can I call it a "term sheet"? Are you fine with  
18 that characterization?

19 A. I think a "term sheet" is fine.

20 Q. Okay. You said that this term sheet  
21 proposes or discusses -- is "discuss" okay? Are you  
22 okay with calling it a discussion?

23 A. I'm fine.

24 Q. Okay. You said that this term sheet  
25 discusses two potential types of transactions,

1 right?

2 A. (Nods head in the affirmative.)

3 Q. Can you just say "yes" or "no." Sorry.

4 A. Yes.

5 Q. And one of them is for a plan of  
6 reorganization, correct?

7 A. It is.

8 Q. Would you characterize this as a  
9 potential plan sponsor transaction?

10 MR. MANN: Objection to form.

11 THE WITNESS: How would you like me to  
12 characterize this? Can you repeat the question or  
13 rephrase it?

14 BY MR. KISSNER:

15 Q. So -- that's fair.

16 I just want to make sure that we're  
17 using consistent terminology, that's all.

18 A. I understand.

19 Q. So this discusses or contemplates two  
20 different types of transactions. And I'm asking  
21 would it be fair to say that one of them is a  
22 potential plan sponsorship transaction?

23 A. This is -- the plan of reorganization  
24 you can characterize as a plan sponsor.

25 Q. And before, you said you didn't think

1 that it was realistic, right?

2 A. Correct.

3 Q. Can you tell me why that is or why you  
4 thought that?

5 A. That they -- the way he described the  
6 \$74 million of -- for the, quote, consideration  
7 across the capital structure and -- did not seem  
8 like it was realistic in terms of his ability to  
9 execute on something in this or have the source of  
10 funds for it.

11 Q. Was there anything other than source of  
12 funds that made you question the ability to execute?

13 A. No. I come at these things  
14 unemotionally, so I take each proposal very  
15 seriously. And this term sheet I took seriously,  
16 like every term sheet, but given the cash flows of  
17 the company, I was very interested to see his source  
18 of funds. That's where I was questioning.

19 Q. And you never received source of funds?

20 A. No. I requested it.

21 Q. Can we look at this paragraph that says  
22 "plan of reorganization" for a second?

23 A. Sure.

24 Q. Or I'll just ask you, do you know what  
25 the proposed consideration to Enigma was, under this

1 term sheet?

2 A. I'd have to relook at it, if you want me  
3 to try to --

4 Q. Sure. Why don't you take a look.

5 A. But I don't -- Item 6 says,

6 "9.850 million, net 8,162,500, for the repayment of  
7 the senior creditor Enigma."

8 Q. That's a lot of money, right?

9 MR. MANN: Objection to form.

10 THE WITNESS: It is 9.850 million.

11 BY MR. KISSNER:

12 Q. It's a lot of money to me.

13 Now, this also discussed a potential  
14 sale transaction, correct?

15 A. Correct.

16 Q. Do you know what the headline purchase  
17 price for the sale transaction was?

18 A. 15.8.

19 Q. Did you think that the potential sale  
20 transaction was realistic?

21 A. Again, we had no idea. We explored it  
22 with him, asked him what he was buying, and in our  
23 conversation it was unclear.

24 Q. I guess what I'm getting at is that when  
25 you looked at this term sheet you said -- strike

1 that.

2 I guess what I'm getting at is that,  
3 before, you said that you had some discussions with  
4 folks at Province about this term sheet, and your  
5 impression had been that the plan of reorganization  
6 was, quote, not realistic.

7 A. That's not what I said. What I said was  
8 Province people were on the phone call with  
9 Aetherial Wolf. We had a discussion with Aetherial  
10 Wolf to whether we thought what his plan of  
11 reorganization looked like and what -- and we  
12 thought, post that conversation, it wasn't  
13 realistic.

14 Q. And you left that first conversation,  
15 and you had asked Aetherial Wolf to provide proof of  
16 funds, right?

17 MR. MANN: Objection to form.

18 THE WITNESS: Correct.

19 BY MR. KISSNER:

20 Q. Did you ask them to provide anything  
21 else?

22 A. Not to my recollection.

23 Q. And did they ever respond to you with  
24 more information after that first conversation?

25 A. I don't recall ever receiving proof of

1 funds.

2 Q. And you said you don't recall a second  
3 conversation?

4 MR. MANN: Objection to form.

5 THE WITNESS: I don't recall, actually.

6 BY MR. KISSNER:

7 Q. Do you recall Mr. Greetham accusing you  
8 of being a criminal?

9 MR. MANN: Objection to form.

10 THE WITNESS: I do not.

11 BY MR. KISSNER:

12 Q. Do you recall him accusing the debtor as  
13 being run by a criminal?

14 MR. MANN: Objection to form.

15 THE WITNESS: I don't remember our  
16 conversation at all. It was very early in our  
17 process.

18 BY MR. KISSNER:

19 Q. He was fairly angry, though, wasn't he?

20 MR. MANN: Objection to form.

21 THE WITNESS: I remember that Don was  
22 very -- spent half the call discussing his accolades  
23 as an investor.

24 BY MR. KISSNER:

25 Q. He has a pretty strong personality,

1 right?

2 MR. MANN: Objection to form.

3 THE WITNESS: I don't -- I've had one  
4 conversation with him, so I don't want to judge him  
5 off of one conversation that I remember.

6 BY MR. KISSNER:

7 Q. That's fair. Just like I hope you don't  
8 judge me for today.

9 So is it fair to say that you didn't  
10 move forward with Aetherial Wolf?

11 A. I think it's fair to say Aetherial Wolf  
12 didn't move forward with the debtor.

13 Q. Did you consider this bid to be  
14 qualified?

15 A. I needed proof of funds for it to be  
16 qualified.

17 Q. And you had mentioned before the concept  
18 of a qualified bid so that's why I asked you about  
19 it now, but I realize we haven't really talked about  
20 that.

21 So what's a qualified bid?

22 A. Well, if you want to go refer to the bid  
23 procedures. I don't have them memorized off the top  
24 of my head, and I think it's in Section 7. It lists  
25 out the -- there might be ten to 12 different



1 qualifications in general.

2 So if you'd like to read those into the  
3 record, I will state that's what a qualified bid is.

4 Q. No, that's okay. I don't think that's a  
5 good use of time.

6 A. Just there's a multiple facet, but one  
7 of them is for -- in a very early stage process is  
8 proof of funds.

9 Q. So if a guy off the street came up and  
10 handed you a dollar, that's not qualified, fair?

11 A. Correct.

12 Q. And I honestly -- you said that you  
13 didn't feel that this was qualified?

14 A. I felt like we needed to see proof of  
15 funds because it was a very aggressive bid.

16 Q. And by "aggressive," what did you mean  
17 by that?

18 A. I mean that the -- that it was new to  
19 us, it had a lot of moving parts, and in order for  
20 this to be accomplished you would need a significant  
21 amount of capital. So any -- with that amount of  
22 capital that he needed in order to accomplish this,  
23 it recalled that we needed proof of funds in order  
24 to see that -- if he actually had the whereforall  
25 [sic] to handle such an aggressive bid in terms of

1 the amount of money that would be needed to  
2 transact.

3 Q. And when Aetherial Wolf failed to  
4 provide proof of funds, did you or anybody at  
5 Province ever follow up with them, do you recall?

6 A. I don't recall, off the top of my head.  
7 I would have to check my notes.

8 Q. Fair enough.

9 Let's turn to Tab 16 which we'll mark as  
10 Exhibit 14.

11 (Exhibit 14 marked.)

12 BY MR. KISSNER:

13 Q. Do you recognize this document?

14 A. Yes. This was the initial term sheet  
15 and I think -- and don't quote me whether it was the  
16 first one, but this was a term sheet from Philosophy  
17 Group -- well, it was AKA Philosophy Group,  
18 iteration 1, Philosophy Group.

19 Q. And this is one of the term sheets that  
20 you received from the parties interested in being a  
21 stalking horse?

22 A. Correct.

23 Q. And what kind of transaction did you  
24 understand this term sheet to propose?

25 A. This was going to be a plan.

1 Q. A plan sponsorship transaction?

2 A. Correct, as you can read on page 2.

3 Q. Okay. Plan sponsor.

4 And what was the total consideration

5 that Philosophy was going to provide as plan

6 sponsor?

7 A. I'd like -- I can't give you a direct

8 answer on that. It is not -- the headline numbers

9 and the real purchase price aren't the same thing,

10 so.

11 Q. Could you explain why?

12 A. Yes. Because despite having a

13 \$18.5 million, quote, purchase price, that also

14 included the cash. And then they also would take

15 out any cure costs. They would also take out

16 professional fees. They've had about four or five

17 different caveats within this that, mathematically,

18 I can't explain to you in this circumstance right

19 now.

20 So the headline number is 18.5, but

21 that's not what actually would be the consideration

22 that would come to the estate.

23 Q. Does this set forth a proposed recovery

24 to Enigma?

25 A. It does.

1 Q. Can you tell me what that proposal was?

2 A. For Genesis and Enigma, you would get  
3 take-back paper of \$3 million.

4 Q. And there's an early call schedule?

5 A. They do have a call schedule.

6 Q. So not all that different from what we  
7 were talking about before, just maybe different  
8 numbers?

9 A. There was a proposal to Enigma for  
10 \$3 million with a call schedule.

11 Q. And then there was also some cash on top  
12 of this, subject to adjustment, right?

13 A. For Enigma and Genesis, is your  
14 question? Can you please elaborate on your  
15 question.

16 Q. Sure. So if we turn back to page 2 to  
17 the base purchase price -- which I understand is a  
18 headline number that might not correlate with the  
19 reality of cash in the door -- and that base  
20 purchase price is \$18.5 million, fair?

21 A. Uh-huh.

22 Q. There's a deduct from that of cure  
23 costs, right?

24 A. Uh-huh.

25 Q. And the 18.5 is going to consist of

1 \$15.5 million less cure, plus \$3 million of  
2 take-back paper, right?

3 A. Correct.

4 Q. Do you know how the \$15.5 million would  
5 have been allocated?

6 A. It does not say. No, I do not.

7 Q. Presumably, it would have just been put  
8 into the bankruptcy waterfall and it would have gone  
9 to whoever's entitled to it, fair?

10 A. Typically, if there's a winning bid and  
11 there's a cash portion, in all bankruptcies it is  
12 distributed based on the waterfall. That's how it's  
13 typically done.

14 Q. So a creditor, depending on their  
15 priority or their collateral and the amount of cash  
16 available, they would receive what they're entitled  
17 to, based off of the bankruptcy code waterfall  
18 right?

19 A. Typically.

20 Q. Now, was Philosophy selected as the  
21 stalking horse?

22 A. They were not.

23 Q. Why not?

24 A. They also didn't provide proof of funds.

25 Q. Did you consider this to be a qualified

1 bid?

2 A. It was never qualified until -- because  
3 we never got proof of funds. This Philosophy Group  
4 had -- never showed us who their investor base was  
5 in order to execute this, until after the stalking  
6 horse was picked. And even then, it was a -- it was  
7 not done in your typical fashion. They showed us a  
8 screenshot of a random bank account which we  
9 couldn't actually verify, other than their word that  
10 this was their money.

11 So in a sense is, this was a term sheet  
12 we spent a tremendous amount of time with Philosophy  
13 Group trying to get them there, you know, and yet we  
14 never really got real proof of funds, in iteration  
15 one of Philosophy Group because it changed.

16 Q. There was a further iteration of this,  
17 then?

18 A. Not of this. They created -- they lost  
19 their investment group here. He cobbled together,  
20 eventually, a new investor group later on in the  
21 process, but not at this particular time in this  
22 term sheet.

23 Q. Okay. We can talk about that later.

24 A. Sure.

25 Q. Why don't we go to Tab 19 in your

1 binder, which I'll ask the court reporter to mark as  
2 Exhibit 15.

3 (Exhibit 15 marked.)

4 BY MR. KISSNER:

5 Q. Do you recognize this document?

6 A. This is the notice of designated  
7 stalking horse bidder.

8 Q. What does that mean?

9 A. This is telling the court that  
10 RockItCoin was picked as the stalking horse bidder  
11 in the process.

12 Q. Do you know what kind of transaction  
13 this related to?

14 A. I've got to go back. Just give me one  
15 second.

16 This says a 363.

17 Q. Okay. Do you know what the purchase  
18 price was?

19 A. The initial stalking horse was  
20 16.75 million, which included 250 for the litigation  
21 trust. I remember this term sheet very well.

22 Q. And then there were additional  
23 components of the consideration, right?

24 A. There was a lot of uncertainty about the  
25 rest of the term sheet in terms of quantifying at

1 the time. The company did not know how many  
2 machines it was going to take. The company did not  
3 know how many -- who were they going to reject. The  
4 company did not know what critical vendors they  
5 wanted to keep. The company did not know what DCMs  
6 they wanted to cure, if they wanted to keep the  
7 enterprises associated with them together.

8 So, yes, there was additional thought  
9 process here in an initial term sheet. But it  
10 wasn't fully quantified, at this particular moment  
11 in time.

12 Q. Okay, I guess what I was getting at is  
13 that, after cash, there's also the payment of cure  
14 costs and the assumption of liabilities, right?

15 A. Critical vendor payments. That's what  
16 that refers to.

17 Q. Oh, okay. Got it.

18 So would it be fair to say that under  
19 the Philosophy term sheet there was a headline  
20 purchase price that was probably going to be lower,  
21 and then under the RockItCoin -- sorry -- the  
22 stalking horse term sheet, there was a purchase  
23 price that was going to be increased by other  
24 buckets of value, fair?

25 A. I would say -- I would tell you that



1 this stalking horse pick of the term sheet was a  
2 better -- was a better term sheet than the original  
3 Philosophy Group term sheet.

4 Q. Right. Because the Philosophy 1 was --  
5 for better or for worse, that was 18.5 minus  
6 something, and this was 16.75 plus something?

7 A. Again, we spoke about this earlier.  
8 I'll refresh you.

9 Picking a purchaser, whether it be a  
10 stalking horse or the winning bidder, is not just  
11 about the full price. In a sense is that we have to  
12 make sure the diligence is right, the ability to  
13 close is right, the -- that they have proof of  
14 funds. So I will not characterize it the way you  
15 would.

16 Q. Okay. I'm just -- I'm not a financial  
17 advisor so I'm just trying to make sure that I  
18 understand what these say. That's all.

19 A. Yeah.

20 Q. So how would you characterize it, then,  
21 because you don't like how I did it?

22 A. I would characterize it as this price  
23 was the best, as a fiduciary for all creditors.

24 Q. Sure. But I was just asking how would  
25 you describe this price. Because I said, perhaps

1 inarticulately, that this is \$16.75 million plus  
2 something else, and you said you didn't agree with  
3 that description.

4 A. I would say that, right now, it's  
5 \$16.75 million plus uncertain cure costs and  
6 critical vendors.

7 Q. And then for the Philosophy term sheet,  
8 it was 18.5 minus some cure costs and other  
9 liabilities?

10 A. It was minus certain liabilities, but it  
11 was also plus a certain amount of debt. So it was  
12 minus and plus in the Philosophy.

13 Q. And weighing the two, the determination  
14 was made, not just off of purchase price, but on a  
15 holistic group of qualitative factors, that this was  
16 a superior offer?

17 A. Correct.

18 MR. MANN: Objection to form.

19 BY MR. KISSNER:

20 Q. And does this reflect how many machines  
21 the stalking horse intended to purchase?

22 A. It did not.

23 Q. And when I say "the stalking horse," do  
24 you understand -- well, strike that.

25 Who was the proposed buyer under this

1 term sheet?

2 A. RockItCoin.

3 Q. And so when I say "RockItCoin" or  
4 "stalking horse," you'll know that I'm referring to  
5 RockItCoin, LLC?

6 A. I do.

7 Q. Okay. Does this term sheet reflect how  
8 many machines RockItCoin wanted to buy?

9 A. I don't think in this term sheet they  
10 specified the number, at this point in time.

11 Q. Right. If you go to page 2, footnote 2  
12 at the bottom, you can read that to yourself, but  
13 that might refresh your recollection.

14 A. Yes. Recalling that we had 3500 for  
15 sale, obviously, in the field, and they were  
16 contemplating here keeping between 1800 and 2500 at  
17 this point in time.

18 Q. And this one wasn't interested in  
19 warehoused units, fair?

20 A. My recollection is that they were --  
21 they were not going to purchase, in the initial term  
22 sheet, the warehouse units.

23 Q. And we've been talking about this as a  
24 term sheet, so I'm just going -- I'll ask you the  
25 same question that I asked you about some of the

1 others.

2 Would you consider this a draft?

3 A. This is an initial term sheet proposed  
4 by RockItCoin that was then verified in order to  
5 become a stalking-horse bid.

6 Q. Would you consider it a formal proposal?

7 A. It was a formal proposal. It's a formal  
8 term sheet and proposal.

9 Q. So this notice -- did this attach a  
10 purchase agreement?

11 A. I don't recall whether this attached a  
12 PA or not.

13 Q. Do you recall when this term sheet was  
14 filed with the court?

15 A. I don't know the exact date. All I know  
16 is that it was after 4/21, so my assumption, it was  
17 filed around the 25th or something.

18 Q. Do you recall if at the time -- strike  
19 that.

20 Do you recall if, by April 25th, the  
21 debtor and RockItCoin had entered into an executed  
22 asset purchase agreement?

23 A. I don't recall.

24 Q. Do you recall when an asset purchase  
25 agreement was executed?

1 A. I don't recall.

2 Q. Now, in your experience, do debtors  
3 generally select a stalking horse without an  
4 executed asset purchase agreement?

5 A. It depends. Sometimes yes, sometimes  
6 no.

7 Q. What does it depend on?

8 A. The debtor's counsel, where we are in  
9 the process. So all I'm saying, there's no firm  
10 rule.

11 Q. Every situation's different, right?

12 A. Every situation is different.

13 Q. In your experience, does having an  
14 executed asset purchase agreement, does that send a  
15 signal to the market?

16 A. Yes.

17 Q. What kind of signal?

18 A. It signals that this is a very strong  
19 bid and real. So my assumption is that we had an  
20 asset purchase, but I don't recall if it was filed  
21 simultaneously with the term sheet.

22 Q. But maybe I'm a little confused.

23 I thought, before, you said that you  
24 didn't recall if there was an asset purchase  
25 agreement executed by this time, right?

1           A.           There should have been a -- typically,  
2           there will be. We always try to execute an asset  
3           purchase agreement. My assumption is that there --  
4           I think there was one, but I don't recall the exact  
5           date, if it was filed in the same filing as this  
6           one.

7           Q.           Now, you said that having an executed  
8           asset purchase agreement sends a positive signal to  
9           the market?

10          A.           It does.

11          Q.           Filing for a stalking horse without an  
12          executed asset purchase agreement, does that send a  
13          signal to the market?

14                   MR. MANN: Objection to form.

15                   THE WITNESS: I think that it's very  
16          rarely done. It's done less often because it's a  
17          pretty negative thing if you're only filing a  
18          stalking horse term sheet. And a lot of times,  
19          under your bid that we need to go through the 12,  
20          you can't have a stalking horse without a filed  
21          asset purchase agreement.

22                   So I'm happy to go back through the 12  
23          conditions that you talked about in the bid  
24          procedures, if you'd like to.

25          ///

1 BY MR. KISSNER:

2 Q. No. That's okay.

3 What are some of the reasons why not  
4 having an executed asset purchase agreement would  
5 send a bad signal to the market?

6 MR. MANN: Objection to form.

7 THE WITNESS: I think it's very simple,  
8 is that not having an executed APA makes it less  
9 likely that the buyer is actually going to close.

10 BY MR. KISSNER:

11 Q. Now, I'm not going to ask you to give a  
12 legal opinion, but is it your understanding that a  
13 party is bound to a proposed transaction before it  
14 executes an APA?

15 A. I'm not a lawyer.

16 Q. Do you have an understanding?

17 A. I'm not going to opine on a legal issue.

18 Q. That's fair enough.

19 Do you have an understanding as to  
20 whether RockItCoin was bound to the terms of the  
21 stalking horse transaction at the time this was  
22 filed?

23 MR. MANN: Objection to form.

24 THE WITNESS: Again, that's a legal  
25 opinion and I'm not going to opine on whether a

1 client -- whether a third party or our side views  
2 them as bound. You can speak to counsel.

3 MR. KISSNER: All right. Let's go to  
4 Tab 44. And we'll mark this as Exhibit 16.

5 (Exhibit 16 marked.)

6 BY MR. KISSNER:

7 Q. Do you recognize this document?

8 A. This is an e-mail, right?

9 Q. It is an e-mail.

10 A. Okay.

11 Q. Do you recognize it, though?

12 A. This exhibit is mixing and matching. So  
13 are you asking me to recognize the e-mail or  
14 recognize the document behind it?

15 Q. Either. Well, let's start with the  
16 e-mail. Do you recognize the e-mail?

17 A. I don't recall the e-mail, but I  
18 understand the context of the e-mail.

19 Q. Okay. What's that context, as you  
20 understand it?

21 A. This context is that Brett was informing  
22 the consultation parties, including yourself, that  
23 RockItCoin basically didn't have -- didn't have  
24 financing.

25 Q. And Brett is Brett Axelrod?



1 A. Yeah.

2 Q. And she's counsel to the debtor?

3 A. She is.

4 Q. And then how about the attachment, do  
5 you recognize this document?

6 A. Are you referring to the stalking horse  
7 bid term sheet asset purchase?

8 Q. I am.

9 A. I recognize the term sheet.

10 Q. Can you tell me what it is?

11 A. Sure. This is the amendment and the new  
12 stalking horse bid.

13 Q. Okay. Does it set forth a proposed  
14 purchase price for the debtor's assets?

15 A. It does.

16 Q. Can you tell me what that purchase price  
17 is?

18 A. Three and a half million, plus 250;  
19 "plus plus," to use your terminology.

20 Q. Now is that less than the original  
21 stalking horse term sheet that we were just looking  
22 at and that's marked as Exhibit 15?

23 MR. MANN: Objection to form.

24 THE WITNESS: It is less, but not -- but  
25 the math is not simple. The initial term sheet that

1 you looked at -- again, you're comparing apples to  
2 oranges. You need to compare like-minded term  
3 sheets in order for you actually -- for the court to  
4 understand what is happening here. The original  
5 term sheet, at 16 and a half, included the cash in  
6 the estate. The new term sheet here, although lower  
7 on a net basis, does not include the cash. So if  
8 you do -- so the math you have to think about is not  
9 apples to apples.

10 BY MR. KISSNER:

11 Q. Do you recall --

12 A. But yes, it is a lower price than the  
13 prior term sheet.

14 Q. Okay. I was going to say, do you recall  
15 the cash that was being purchased under the initial  
16 term sheet?

17 A. 9 million.

18 Q. And they're not purchasing the cash  
19 here?

20 A. They are not.

21 Q. And the initial term sheet, to use my  
22 inartful phrasing, was 16.75 plus plus, right?

23 A. I would agree that that's what it looks  
24 like.

25 Q. And so net of \$9 million cash, that

1 would have been \$7.75 million of consideration?

2 A. That would be.

3 Q. Okay. And then this revised term sheet

4 does not include any cash component, right? This

5 revised term sheet does not contemplate purchasing

6 cash from the debtor, correct?

7 A. Correct.

8 Q. If one were to do an apples-to-apples

9 comparison, one would say that this is a purchase

10 price of \$3.5 million versus \$7.75 million, fair?

11 A. RockItCoin basically didn't have any

12 money.

13 Q. It didn't have any money?

14 A. Didn't have enough money to complete the

15 prior purchase. They lost their financing from a

16 bank and could not go forward with the different --

17 the prior transaction. They came back here,

18 proposed a new transaction, and that's what this

19 looks like. They showed us a new proof of funds

20 that would have covered a three and a half plus the

21 250, plus plus. But RockItCoin effectively walked

22 away from the initial term sheet.

23 Q. In your experience, have you ever seen

24 that happen before?

25 A. Sure. There are many times in any

1 financial transaction where you thought you would  
2 have financing and then financing did not take  
3 place.

4 Q. Including with a stalking horse?

5 A. It could happen in any transaction,  
6 stalking horse just being one of them.

7 Q. Had you ever seen that happen on a  
8 transaction with a stalking horse?

9 A. I have not been involved directly with a  
10 transaction where someone walked away from a stalking  
11 horse with financing.

12 Q. Do you recall if one of the  
13 qualifications to become stalking horse was proof of  
14 financing?

15 A. They had proof of financing, correct,  
16 that was a qualification, but that's -- again, I'm  
17 happy to go back and read the bid procedures.

18 Q. I guess I'm just confused because they  
19 had proof of financing, but then the financing  
20 disappeared?

21 A. (Nods head in the affirmative.)

22 MR. MANN: Objection to form.

23 THE WITNESS: It did.

24 BY MR. KISSNER:

25 Q. Do you think this sent a signal to the

1 market?

2 A. I'm not going to judge what markets --  
3 I'm not in the business of judging what the market  
4 thinks.

5 Q. But do you think it sent a signal?

6 MR. MANN: Objection to form.

7 THE WITNESS: Again, I'm not in the  
8 business of interpreting what the market thinks.

9 BY MR. KISSNER:

10 Q. Right. But I guess, before, you had  
11 told me that, for example, having an executed APA,  
12 that sends a positive signal; having a stalking  
13 horse, that sends a positive signal. So I'm just  
14 asking did this, do you think, send a signal?

15 MR. MANN: Objection to form.

16 THE WITNESS: I don't think it  
17 necessarily has anything to do with the company.  
18 The only signal it sends is that RockItCoin didn't  
19 have the funds that they originally thought they  
20 had.

21 MR. KISSNER: Hopefully, I have like an  
22 hour, hour and a half left, I would say. Do you  
23 guys need to take another break?

24 THE WITNESS: Yeah. Let me use the  
25 bathroom.

1 MR. KISSNER: Let's go off for a couple  
2 minutes.

3 (A recess is taken.)

4 MR. KISSNER: We're back on.

5 BY MR. KISSNER:

6 Q. We just came back from a break. Did you  
7 have any discussions about the content of your  
8 testimony during the break?

9 A. I did not.

10 Q. Okay, great.

11 So we were talking a little bit about  
12 this revised bid from RockItCoin. How many other  
13 bids did the debtor end up receiving, if you recall?

14 A. The one thing I note about this in your  
15 analysis, which was incorrect, again, is that the  
16 number of machines was only 600 to 1,000 versus the  
17 old term sheet was a much greater amount. So again,  
18 the math is different. So again I just want to be  
19 clear that you're comparing apples to oranges.

20 Secondly, I think at the time we  
21 received, if you include Aetherial Wolf -- not all  
22 qualified -- RockItCoin, Forest Road in conjunction  
23 with National Bitcoin, Philosophy 1. And I'll use  
24 that term, if that's okay with you -- at this point  
25 in time, and then the revised RockItCoin. So I'd

1 say at that particular moment in time, my  
2 recollection is roughly four.

3 Q. And by "that moment in time," you mean  
4 late April, the time of the bid deadline?

5 A. I am saying as of when this was filed on  
6 5/12.

7 Q. Oh, okay. Got it.

8 A. I'm just using that as my recollection  
9 at this point.

10 Q. Fair enough.

11 And you mentioned Forest Road. You said  
12 they were in conjunction with National Bitcoin.  
13 They were also in conjunction with the DIP lender,  
14 right?

15 A. In the beginning.

16 Q. Okay. At some point they no longer  
17 were?

18 A. Yes.

19 Q. Do you have any understanding as to why  
20 that changed?

21 A. Other than that they weren't interested.

22 Q. Okay. So you were saying that those --  
23 and by "those," I mean Philosophy 1, RockItCoin,  
24 Forest Road and Aetherial Wolf --

25 A. I like that you're using "Philosophy 1,"

1 by the way.

2 Q. Yeah, I gotcha.

3 Aetherial Wolf, I think, was the fourth  
4 and they weren't qualified. So that's four bids,  
5 right?

6 A. At that particular moment in time.

7 MR. MANN: Objection to form.

8 BY MR. KISSNER:

9 Q. That's fine.

10 But later on there were more bids,  
11 different bids?

12 A. Well, of course.

13 Q. What other bids do you recall the debtor  
14 receiving, whether qualified or otherwise?

15 A. Qualified or unqualified, before the  
16 next time, which was May 30th, which was the time  
17 the next term sheets had to be due, prior to the  
18 auction, we received the Philosophy 2 and we  
19 received the Heller/Genesis.

20 Q. Any others?

21 A. Not that I recall.

22 Q. Okay.

23 MR. KISSNER: Let's go to Tab 24, which  
24 I'll ask the court reporter to mark as Exhibit 17.

25 (Exhibit 17 marked.)



1 BY MR. KISSNER:

2 Q. And you had just said you received  
3 Philosophy 2 and Heller, right?

4 A. That is my recollection.

5 Q. Okay. We'll take those out of order and  
6 we'll start with what I think you referred to as  
7 "Heller."

8 So looking at Tab 24, which is  
9 Exhibit 17, do you recognize this document?

10 A. I do.

11 Q. Can you tell me what it is?

12 A. This was the initial term sheet for the  
13 ATM assets from Heller -- and I'm not going to say  
14 it was the initial because all his forms look alike.

15 Q. That's fair.

16 There were a number of revisions to this  
17 over --

18 A. Yes. I don't know which one you're  
19 showing me, but there is -- this is the format that  
20 Heller Capital typically used to provide a term  
21 sheet.

22 Q. If I told you this was one was dated  
23 June 1st, would that ring a bell to you?

24 A. It would.

25 Q. So is it your understanding that this is

1 a revised version of whatever term sheet they sent  
2 before May 30th?

3 A. Correct.

4 Q. Okay. Does this -- strike that.

5 What is your understanding of the type  
6 of transaction that this term sheet proposes?

7 A. This was a -- basically under a 363  
8 as-is when-is sale.

9 Q. Would you consider this a final  
10 proposal -- or strike that.

11 Would you consider this a formal  
12 proposal, I believe is the terminology that we were  
13 using before?

14 A. I would say this is a initial proposal,  
15 correct.

16 Q. An initial proposal. Okay.

17 A. Or a formal. It's all -- for the --  
18 ahead of the auction, yes.

19 Q. Okay. Did you consider Heller's bid to  
20 be a qualified bid?

21 A. We did.

22 Q. And does this set forth a recovery for  
23 Enigma?

24 A. It does not, is my recollection. Heller  
25 was buying the assets in this term sheet. In

1 conjunction, were also buying the software assets at  
2 the same time. But basically this is an as-is  
3 when-is 363 sale and they were just buying the  
4 assets.

5 Q. And by "the assets," you're referring to  
6 what?

7 A. In this term sheet, because Heller was  
8 negotiating -- or George was negotiating on behalf  
9 of Heller and Genesis Coin, so everything done was  
10 in conjunction, so looking at these out of sequence  
11 is not correct.

12 This particular part of it was a  
13 purchase for the DCMs that were of -- as he lists  
14 here, 2200 in storage and 3500 DCMs that were in the  
15 field.

16 Q. So it's a total of 5700 DCMs?

17 A. That is what this says.

18 Q. And what was the purchase price for the  
19 5700 DCMs?

20 A. 3.7, and split 770,000 for warehouse,  
21 2.930 for ones that were in the field.

22 Q. But that's 3.7 headline?

23 A. 3.7 headline.

24 Q. And did this have -- strike that.

25 Do you recall that some of the term

1 sheets that we were talking about before, you were  
2 saying that the headline purchase price wasn't  
3 necessarily the cash that was going to come in; is  
4 that fair?

5 A. That is fair.

6 Q. Does the same caveat apply to this?

7 A. No. This is a straight asset purchase  
8 for 3.7 million for the DCMs, plus 1.5 for the -- or  
9 actually, at the time, roughly \$2 million for the  
10 Genesis software.

11 Q. And that was in a separate term sheet  
12 but submitted in conjunction with this one?

13 A. And negotiated with the same party  
14 negotiating for both. So from the debtor's  
15 perspective, is they were together.

16 Q. Okay. And that was a headline total  
17 purchase price of \$5.7 million?

18 A. That's correct.

19 Q. Okay. Did you consider this to be a  
20 superior offer to the stalking horse?

21 A. We did.

22 Q. Okay. And what were some of the reasons  
23 for that?

24 A. I think, very simply, one, this was an  
25 as-is when-is sale, not subject to due diligence.

1 We were very concerned, given the operational state  
2 of the business, that RockItCoin couldn't close.  
3 They had a massive due diligence out. They --  
4 basically the operations were deteriorating  
5 immensely at the time of this auction. And what I  
6 mean by that is, one is -- we talked about this  
7 earlier -- we lost two licenses. We got an e-mail  
8 on the day of the auction from Jim Hall that said,  
9 "We have only \$500,000 in cash. We are at  
10 dangerously low levels. We've had software  
11 problems. We had machines not working. We had a  
12 threat from OptConnect, who threatened us to turn  
13 off our -- if we didn't pay them a certain amount of  
14 money, to turn off our whole business."

15 So at the time, walking into this  
16 auction, we were very concerned that when RockItCoin  
17 decided to look under -- continue to do their  
18 diligence here, with their large diligence out,  
19 which included key employees, that they weren't  
20 going to be able to close. And our terms and  
21 conditions on the bid procedures was an as-is  
22 when-is sale and this is an as-is when-is sale. So  
23 there was multiple factors besides just a headline  
24 price that we're taking into account.

25 Q. And RockItCoin had already burned you

1 before, right?

2 A. That hadn't -- we don't get emotional  
3 about counterparties. We are looking at this  
4 straight, on the way we look at any analysis. So  
5 that had nothing to do with anything.

6 Q. Right. I'm not accusing you of letting  
7 emotions cloud your judgment, I'm just observing  
8 that --

9 Well, I'm wondering if an objective  
10 consideration was that RockItCoin had already backed  
11 out of a prior term sheet?

12 A. That was not a consideration, only  
13 because their revised term sheet qualified. So  
14 thus, I was not concerned about that because they  
15 did qualify. Any buyer can always walk away. It's  
16 a normal course of running any M&A process, whether  
17 you're a buyer or you're a seller. Thus, RockItCoin  
18 was treated like anybody else who had proof of  
19 funds.

20 We also didn't have a -- we would want  
21 to encourage RockItCoin to be at the table, and we  
22 did heartedly, because we were trying -- we were  
23 going to auction. We want as many parties as  
24 possible so that we have as much competition as  
25 possible in order to get the highest price for the

1 estate.

2 Q. Because that bids up the price, right?

3 A. More people bidding for an asset, the  
4 likelihood of having a higher price increases.

5 Q. Makes sense.

6 A. Simple supply-and-demand economics.

7 Q. Took the words right out of my mouth.

8 Let's turn to Tab 25 and we'll mark that  
9 as 18.

10 (Exhibit 18 marked.)

11 BY MR. KISSNER:

12 Q. Do you recognize this document?

13 A. I do.

14 Q. What is it?

15 A. This is Philosophy 2.

16 Q. Can you describe it?

17 A. Can you expand on how you would like me  
18 to describe it?

19 Q. Just, in your own words, just tell me  
20 what this document is, beyond Philosophy 2?

21 A. This was Philosophy 2 to be, basically,  
22 a new term sheet in an attempt to be a plan sponsor.

23 Q. You see where it says on page 2 -- if  
24 you go down, do you see where it says "Plan Sponsor"  
25 in bold on the left, and you see the column to the

1 right beginning "newly formed acquisition vehicle"?

2 A. Where do I see that?

3 Q. Right next to "plan sponsor," it says "a  
4 newly formed" --

5 A. Yes, by "DigitalImpact," which was  
6 Philosophy 2.

7 Q. I was going to say, do you understand  
8 DigitalImpact Holdings, that's Philosophy?

9 A. Yeah, DigitalImpact Holdings is  
10 Philosophy 2.

11 Q. And this was a plan sponsorship term  
12 sheet, right?

13 A. It was.

14 Q. When did you receive this?

15 A. My recollection -- I don't recall the  
16 date. I do recall that it was potentially after the  
17 deadline for term sheets to be submitted.

18 Q. Could you look at the stamp at the top?  
19 Does that refresh your recollection?

20 A. Okay. This is 6/1. Again, there was  
21 multiple versions. Okay. I'm with you.

22 Q. I understand. I was copied on some of  
23 the e-mails.

24 A. Yeah, the original, this was the 6/1  
25 version. I'm with you.



1 Q. Okay. And this was a plan sponsorship  
2 transaction, right?

3 A. Uh-huh.

4 Q. And the auction was on June 2nd?

5 A. Correct.

6 Q. So at least as of June 1st, the company  
7 was still soliciting interest in a plan sponsorship  
8 transaction?

9 A. We have -- as I've repeatedly said, we  
10 are -- we were open to any type of arrangement.

11 Q. Okay. Does this set forth a recovery  
12 for Enigma?

13 A. No.

14 Q. Could you turn to page 6 of the  
15 document?

16 A. It does have -- on the front page it has  
17 the \$6 million of take-back paper. I don't know if  
18 there's actually specific recovery for Enigma.

19 Q. On page 6?

20 A. Yes, for Genesis and Enigma, \$6 million  
21 of take-back paper.

22 Q. And take-back paper is new debt, right?

23 A. In the reorganized company.

24 Q. And then turning back to page 2, do you  
25 see where it says "base purchase price"?

1 A. Uh-huh.

2 Q. So this says the purchase price

3 consisted of some amount of cash plus take-back

4 paper, fair?

5 A. It does.

6 Q. And I think before we were talking about

7 how a cash component, that would be -- for lack of a

8 better word -- run through the waterfall, and

9 whoever's entitled to it gets it?

10 A. Yes.

11 Q. Would you agree that is also the case

12 with this proposal?

13 A. Sure.

14 Q. Did you view this as a qualified bid?

15 A. And remember, when I'm talking about

16 that, I'm talking about gross, not net proceeds.

17 Different.

18 Q. Sure. How do those differ?

19 A. Well, "net" has deductions for

20 surcharges, other things that could potentially come

21 out of it that are away from -- you know, gross and

22 net are two different things. That's not the way

23 that we run an auction. We run it on a gross basis.

24 Q. Of course.

25 A. So the waterfall could differ than

1 directly down the waterfall, just to be clear.

2 Q. Sure.

3 I think -- would it be fair to say that  
4 some of the deductions from the waterfall are what  
5 you're talking about there?

6 A. Yes. There might be other deductions,  
7 yes.

8 Q. So they sort of sit at the top?

9 A. Correct.

10 Q. Did you view this as a qualified bid?

11 A. We needed special approval to get --  
12 from all creditors, as you remember, including any  
13 consultation parties, to make this -- to have this  
14 put in place. The original bid, remember, was  
15 allowed sort of into the fold to create as many  
16 buyers as we could. But remember, the consultation  
17 parties made an exception to that rule, only on the  
18 basis that -- because we were still waiting on proof  
19 of funds.

20 Number two is yes -- so eventually, yes,  
21 they were in the room, they provided proof of funds,  
22 but not on the day one of the bid procedures.

23 Q. Do you see where on this page it says  
24 "purchase price deposit"? Can you read that to  
25 yourself.

1 A. Uh-huh.

2 Q. Let me know when you're done.

3 A. Yep, I read it.

4 Q. So this contemplated that, at the end of  
5 the auction, Philosophy would deposit \$980,000 into  
6 a bank account?

7 A. Which, again, was against the bid  
8 procedures.

9 Q. Okay. But that's what this  
10 contemplates, at least?

11 A. It does.

12 Q. At the time of the auction, had you  
13 received proof of funds with respect to the  
14 \$980,000?

15 A. I don't recall at the exact moment in  
16 time.

17 Q. Okay.

18 A. And, again, the proof of funds was a  
19 bank account.

20 Q. Yep. A screenshot of a bank account.  
21 Anybody could make that.

22 A. Which, as we know, is trying to create  
23 demand but is sort of -- you have to think about  
24 that in, again, the mosaic of how to determine  
25 winning bidders.

1 Q. But you gave them a seat at the table at  
2 the auction; they were allowed to participate?

3 A. We did.

4 Q. Did you ever have any intention of  
5 pursuing a transaction with Philosophy?

6 A. Of course. We had intentions of  
7 pursuing with each party equally.

8 Q. So at the time of the auction, you had  
9 an intention of pursuing a plan sponsorship  
10 transaction with Philosophy provided that they were  
11 the winning bidder?

12 A. We had the same intention with every  
13 party.

14 Q. Okay. And that intention was, if you  
15 won the auction, you'd move forward with the  
16 transaction that was selected?

17 A. Correct.

18 Q. So we were talking before about how  
19 RockItCoin was the stalking horse, right?

20 A. They were.

21 Q. Do you think the process benefited from  
22 having a stalking horse?

23 A. We did. That's why we had a stalking  
24 horse in place.

25 Q. How do you think the sale process

1 benefited from having a stalking horse in place?

2 A. Because no matter what happens, we have  
3 a bidder.

4 Q. Do you think the estate benefited from  
5 having RockItCoin serve as stalking horse?

6 A. We did.

7 Q. And why is that?

8 A. Same reason.

9 Q. Do you think that Enigma benefited from  
10 RockItCoin serving as the stalking horse?

11 A. I didn't look at Enigma as an individual  
12 creditor. I'd look at it as fiduciary  
13 responsibility to the estate and each creditor  
14 within the estate, not as Enigma in general. I  
15 think in general having a stalking horse that  
16 creates the highest price benefits the estate and  
17 all creditors.

18 Q. Sitting here today, do you think that  
19 Enigma benefited from RockItCoin serving as stalking  
20 horse?

21 MR. MANN: Objection to form.

22 THE WITNESS: Again, my answer would be  
23 the same.

24 BY MR. KISSNER:

25 Q. Do you know what a "breakup fee" is?

1 A. I do know what a breakup fee is.

2 Q. Can you explain it to me?

3 A. Breakup fee is the amount of money a  
4 stalking horse receives if someone else, basically,  
5 overbids their initial stalking horse bid and they  
6 ended up not being the winner of the auction.

7 Q. Was RockItCoin entitled to a breakup fee  
8 under its APA?

9 A. They were.

10 Q. Do you recall how much it was?

11 A. It was three percent of the purchase  
12 price plus 150,000 of expenses. If I remember  
13 correctly, it's 186,000 plus 150. Add those two  
14 numbers together and you get to their stalking horse  
15 fee -- or breakup fee.

16 Q. So 336, does that sound right?

17 A. Sounds right.

18 Q. Do you know if the debtor, in fact, paid  
19 RockItCoin a breakup fee?

20 A. We did.

21 Q. Do you know how much it paid on account  
22 of the breakup fee?

23 A. I did not execute that transaction.

24 Q. Was there a reduction in the breakup fee  
25 paid? I just don't recall.

1 A. I don't recall either. I don't think  
2 so, but I don't recall.

3 Q. Do you recall that there was a dispute  
4 over the breakup fee?

5 A. Briefly, but I don't recall the details.  
6 It was handled by counsel.

7 Q. Do you recall anything about it?

8 A. There was a small dispute.

9 Q. Do you know what it was about at all?

10 MR. MANN: Objection to form.

11 THE WITNESS: I don't recall the details  
12 of it, so I'm not the best person to ask on that  
13 particular topic.

14 BY MR. KISSNER:

15 Q. All right. Are you aware of any  
16 litigation being filed with respect to that dispute?

17 A. There was definitely -- there was talk  
18 of litigation. I just don't know -- I don't recall  
19 the end of the process, of the steps in the process  
20 to get there. It was resolved.

21 Q. It was resolved at the end of the day?

22 A. That was my understanding.

23 Q. And as -- presumably as part of that  
24 resolution, a breakup fee got paid?

25 A. Correct.



1 Q. Do you think Enigma benefited from the  
2 payment of a breakup fee to RockItCoin?

3 A. I think the debtor engaged in  
4 contractual terms.

5 Q. But do you think Enigma received a  
6 benefit?

7 MR. MANN: Objection to form.

8 THE WITNESS: I don't know why that's  
9 relevant. I don't even know even how to  
10 characterize something that has nothing to do with  
11 Enigma.

12 BY MR. KISSNER:

13 Q. So you think the breakup fee had nothing  
14 to do with Enigma?

15 A. I think that, at the end of the day, is  
16 a stalking horse was -- set the floor of the  
17 auction. In every -- almost ev- -- every stalking  
18 horse bid generally has a breakup fee attached to  
19 it. If the stalking horse is a benefit to the  
20 estate and all creditors and a breakup fee is part  
21 of that, then it benefits all creditors. If you'd  
22 like to single out Enigma yourself, you can, but  
23 that's the way I look at it.

24 Q. Okay. But you think the estate as a  
25 whole benefited from the payment of the breakup fee?

1 A. I think the estate as a whole benefits  
2 as a stalking horse bid.

3 Q. And part of the price of having the  
4 stalking horse is you've got to pay the breakup fee?

5 A. That is correct.

6 Q. Okay. All right. Let's talk a little  
7 bit about the auction, if that's okay.

8 A. Sure.

9 Q. It wasn't my favorite night either, so  
10 that's fine.

11 MR. KISSNER: Let's turn to Tab 41.

12 We'll mark this as Exhibit 19.

13 (Exhibit 19 marked.)

14 BY MR. KISSNER:

15 Q. Do you recognize this document?

16 A. I do.

17 Q. What is it?

18 A. My recollection, this is -- this is  
19 Tanner giving you a heads up on who we're picking as  
20 the first bid --

21 Q. Okay. And this --

22 A. -- at the auction.

23 Q. Sorry.

24 A. At the auction.

25 Q. And this lists, I think, four bids

1       there?

2           A.       There were.

3           Q.       And one of the bids was Heller Capital  
4       and Genesis Coin, and that was who we were  
5       discussing earlier, right?

6           A.       They were.

7           Q.       And then another one is RockItCoin, and  
8       that was the stalking horse. And then another one  
9       was DigitalImpact Holdings and that's Philosophy 2?

10          A.       Correct.

11          Q.       Okay. I also see Chris McAlary's name  
12       here.

13          A.       That's correct. But he was bidding on  
14       more Brazil and litigation assets than he was on the  
15       company itself, although there was a informal,  
16       apparently, agreement or conversations happening  
17       between Chris McAlary and DigitalImaging.

18          Q.       Interesting.

19                   Do you know anything about the substance  
20       of those communications?

21          A.       I do not.

22          Q.       When did you learn about those  
23       communications?

24          A.       Sometime during the process, prior to  
25       the auction. But there was no formal agreement so

1 we treated them as separate.

2 Q. Do you know anybody at Province who  
3 would know more about those communications?

4 A. I do not. We weren't involved. Chris  
5 was there doing diligence for them, so that Chris,  
6 as CEO of the company, was providing conversations  
7 about the company.

8 Q. Was Province okay with that or --

9 A. Yeah. I mean it's -- again, the more  
10 information that helps the buyer get to a higher  
11 price, whether it was from the CEO, CFO, Province,  
12 we encouraged. Diligence was a big deal here, given  
13 the operational disarray the company was in.

14 Q. You said Chris was bidding on Brazil and  
15 litigation assets, right?

16 A. That's correct.

17 Q. And the litigation assets, I think, is  
18 subject to a current ongoing dispute, right? Are  
19 you aware of that?

20 A. Dispute?

21 Q. Yeah. I think there's a dispute in the  
22 bankruptcy court about it. You're not here to  
23 testify about it. I just want to make sure I'm  
24 correct.

25 MR. MANN: Objection to form.

1 THE WITNESS: Just continue on.

2 BY MR. KISSNER:

3 Q. I mean he wanted to buy some litigation  
4 claims; is that the idea?

5 A. He wanted to buy Brazil and some  
6 litigation claims.

7 Q. Do you know what litigation claims those  
8 were?

9 MR. MANN: Objection to form.

10 THE WITNESS: It was the Bitcoin Depot  
11 at the time. Cole Kepro was not offered at the  
12 auction.

13 BY MR. KISSNER:

14 Q. And Bitcoin Depot, that was bid access,  
15 that whole dispute?

16 A. There's two litigations within it, yeah.

17 Q. But it related to them turning off the  
18 machines?

19 A. On the bid-access side, yeah.

20 Q. And then -- so that's fine. Litigation  
21 claims.

22 You also said "Brazil." Can you  
23 elaborate on what that meant or means?

24 A. They have a subsidiary called Brazil.

25 Brazil was -- was, at the time, still the subject of

1 major diligence by us, in terms of understanding it.

2 It's a very -- it's a very difficult asset to

3 diligence for anybody, because of its location,

4 because of the conditions that were put around it

5 where there's power of attorney away from the

6 company, so -- and but there was cash down there,

7 and there was assets down there.

8 So as a representative of the estate,

9 you know, we would love to have -- we would love to

10 sell that asset, but we were doing our work to try

11 to make sure that we were maximizing value.

12 Q. And the debtor owned the equity in the

13 Brazilian subsidiary?

14 A. That's correct.

15 Q. If we just say "Brazil," we'll know

16 we're talking about the Coin Cloud Brazil

17 subsidiary?

18 A. I am fine with that.

19 Q. You said there were some cash down there

20 and some other assets, right?

21 A. Yeah, cash and some DCMs.

22 Q. So "some DMCs," that was what you meant

23 by "other assets"?

24 A. Correct.

25 MR. MANN: Objection to form.

1 BY MR. KISSNER:

2 Q. Do you have any sense of how many DCMs  
3 are owned by Brazil?

4 A. I would say that originally it was  
5 someplace around 20.

6 Q. Okay. And now?

7 A. I think -- I think they might have --  
8 have additional that were shipped down there, but I  
9 don't know the exact number.

10 Q. Shipped down there by the debtor?

11 A. Uh-huh.

12 Q. So previously, they were in control of  
13 the debtor; now, they're in Brazil?

14 A. I think these were always predetermined  
15 to go down there and I think they -- if I remember  
16 correctly, they were paid for by Brazil. But I  
17 don't have that information -- I wasn't prepared for  
18 that information today.

19 Q. That's fair.

20 Do you know who at Province might know  
21 about that or who at the company might know about  
22 that?

23 A. I can offer I can get back to you.

24 Q. Okay. That would be fantastic.

25 A. I don't have the person who knows about

1 the intricacies of Brazil.

2 Q. Good country.

3 A. In terms of --

4 Q. Is it fair to say then that the DCMs  
5 owned by Brazil, not part of this asset sale?

6 A. Correct.

7 Q. Did any of the other bidders express an  
8 interest in buying Brazil, or just Chris?

9 A. I think over time there's been many  
10 iterations of these term sheets, I think, so in the  
11 current term sheets, you see there the answer is no.

12 Q. Okay. I'll take your word for it.

13 Were there any other bidders that  
14 participated in the auction, other than the four  
15 that are listed in Exhibit 19?

16 A. Enigma.

17 Q. Okay. Anybody else?

18 A. No.

19 Q. Okay. Let's turn to Tab 42, which we'll  
20 mark as 20.

21 (Exhibit 20 marked.)

22 BY MR. KISSNER:

23 Q. Do you recognize this document?

24 A. Yes. This is the document that I didn't  
25 see until post auction because I was in New York, as



1 you were in London. But yes, this was the terms of  
2 the Enigma credit bid, which was 2.6 million for --  
3 of securities for 2200 machines.

4 Q. And you never saw this term sheet the  
5 night of the auction?

6 A. I saw a partial screenshot of it, but I  
7 didn't see the actual physical term sheet.

8 Q. Was this bid accepted by the debtor?

9 A. Well, this bid was subject to, in  
10 conjunction with RockItCoin's bid. So the way  
11 Enigma went down is very simple. And we have e-mail  
12 correspondence, if you'd like to review it, Andrew.  
13 And you sent me an e-mail the night before, on  
14 June 1st. "You," Enigma, said that we might -- we  
15 might be credit bidding here. We intend to. We did  
16 not like the choice of the Heller bid and the  
17 Genesis bid, which is really interesting because you  
18 didn't object to the APA and the final sale. But  
19 we'll leave that on the record, that that was --  
20 already been approved and you did not object.

21 So you guys then, the next day, had --  
22 we were willing to accept all -- every and all bids.  
23 We -- RockItCoin came back with a revised offer.  
24 That revised offer came to us and included Enigma.  
25 You were very clear in an e-mail that your bid was

1 intended to be stapled to RockItCoin's, correct?

2 And we accepted it and we considered it, and then

3 RockItCoin came in and pulled out. They did not

4 like that certain employees were no longer at the

5 firm and said this violated something that they

6 thought was important in terms of running the

7 software. So, thus, both bids kind of went away at

8 that particular moment in time.

9 Q. You seem pretty defensive about this.

10 A. Not defensive, I'm just factual.

11 Q. Okay. So the reason why it wasn't

12 accepted is because, you would say, a fundamental

13 assumption of this bid didn't turn out to be true?

14 MR. MANN: Objection to form.

15 THE WITNESS: That's not what I would

16 say at all.

17 BY MR. KISSNER:

18 Q. What would you say?

19 A. I would say that your bid was stapled to

20 RockItCoin's and RockItCoin withdrew their offer.

21 Simple.

22 Q. Sure.

23 And this was a credit bid, right?

24 A. It was.

25 Q. If Enigma's credit bid had been

1       accepted, would Province had earned a transaction  
2       fee on the sale?

3                       MR. MANN: Objection to form.

4                       THE WITNESS: We would not.

5       BY MR. KISSNER:

6               Q.       Okay.

7               A.       We did offer you the ability to credit  
8       bid still. We offered you and we offered Michael  
9       the ability to credit bid.

10              Q.       Who's Michael?

11              A.       He's the CEO of Enigma.

12              Q.       Michael Halimi?

13              A.       Yes.

14                      And you turned us down.

15              Q.       Okay.

16              A.       So we have kept every option open  
17       multiple times during this process.

18              Q.       And who eventually won the auction?

19              A.       The Heller/Genesis combination.

20              Q.       And why were they selected as the  
21       winner?

22              A.       Our view is they provided the best  
23       outcome to the estate and all creditors.

24              Q.       And before, we were talking about this  
25       idea of highest and best, do you remember that?

1 A. Uh-huh.

2 Q. Did you think that the Heller/Genesis  
3 Coin joint bid was the highest and best?

4 A. It was.

5 Q. Why is that?

6 A. Number one is they had no diligence  
7 outs. The company was in operational disarray. We  
8 had massive operational problems. There was no  
9 other party that did not have diligence outs.

10 Q. Anything else?

11 A. No. That was the largest -- on a  
12 comparative basis that was a large consideration.

13 Number two, at the time of picking  
14 Heller at the end, we had no other bids that didn't  
15 have any diligence outs. So a big condition here is  
16 the operational disarray of the company and getting  
17 the closing. And that came to fruition, even more  
18 so than it was before, a week later, when OptConnect  
19 turned us off.

20 Q. Was one of the factors considered by the  
21 debtor the likely closing timeline?

22 A. Sure.

23 Q. Was that a factor that was favorable for  
24 Heller?

25 A. Heller had an easier close because they

1 didn't have the same diligence clause.

2 Q. Do you recall if you had an expectation  
3 of about how long the Heller sale would take to  
4 close, at the time of the auction?

5 A. We did, but I don't remember the exact  
6 time line.

7 Q. Was it more than a day?

8 A. It was more than a day, yes.

9 Q. More than a week?

10 A. I'm not going to opine anymore, because  
11 I have -- I don't recall.

12 Q. More than a day.

13 Less than a month?

14 A. I just don't recall, so.

15 Q. Less than a year?

16 MR. MANN: Objection to form.

17 BY MR. KISSNER:

18 Q. And what was the purchase price that was  
19 paid by -- strike that.

20 We were talking before about how the  
21 winning bid was a joint bid, Heller and Genesis  
22 Coin, represented by the same people, negotiated by  
23 the same people, we should consider them together.  
24 So how much was that joint bid?

25 MR. MANN: Objection to form.

1 THE WITNESS: 5.7.

2 BY MR. KISSNER:

3 Q. Okay. Did that bid have an allocation  
4 between various components?

5 A. It did.

6 Q. Could you describe that to me?

7 A. It was 2 million originally for the  
8 software, and the difference, 3.7, I guess it is,  
9 for the assets.

10 Q. And then -- well, you said originally it  
11 was one thing. Presumably that means a change?

12 A. It did. We had a meeting with Enigma,  
13 and you were on that phone call where we gave you a  
14 choice. Heller was going to buy all the assets and  
15 the software irrespective of what Enigma would like  
16 to do on a credit bid side. We gave you a very  
17 clear choice of, you're more than welcome to credit  
18 bid for those assets and Heller will buy the rest  
19 and we'll adjust a pro-rata purchase price, or you  
20 offer us -- -- or you decide that you'd like this  
21 bid. Your CEO asked us for 500,000 from --  
22 allocation away from the software to the assets. We  
23 told you that we can't do that, but we will take it  
24 back to the client, to the buyer. And you asked for  
25 a discussion with him. You had that discussion. He

1 went and said he'd consider it. And he made a  
2 decision based on your conversation to do that  
3 allocation.

4 Q. When you say "he," you're referring to  
5 whom?

6 A. George and his representatives.

7 Q. And George was the principal at Heller?

8 A. Heller and Genesis, the person who was  
9 the third party we were negotiating with.

10 Q. And was that conversation with George,  
11 was that between Michael and George, or were you  
12 involved in that?

13 A. I was just -- I was on the call myself,  
14 Zach Williams from Fox -- I was on the phone, you  
15 were on the phone, Michael was on the phone, George  
16 was on the phone. I don't know of any other party  
17 because I couldn't see the screen, based on being on  
18 my phone. But those were generally the  
19 conversations and those conversations went between  
20 Michael and George.

21 Q. And you were a fly on the wall,  
22 basically?

23 A. As were you.

24 Q. Do you know how long it eventually took  
25 for the Heller sale to close?

1 A. Final close date on the Heller sale was  
2 July 21st.

3 Q. And the auction was June 2nd?

4 A. Correct.

5 Q. So a month and a half?

6 A. Absolutely.

7 Q. Do you think that was more or less than  
8 what your expectation had been at the time, if you  
9 can recall?

10 A. I think it was more than the  
11 expectation. The -- Heller offered to pay us  
12 250,000 for the estate, for the negative operating  
13 expenses that it would cost us to keep -- to close  
14 later. So they actually paid consideration for an  
15 extension of the timeline because we had to keep  
16 certain things up and running that we would normally  
17 have shut down, by that point, to save the estate  
18 money.

19 Q. And that increase in consideration, that  
20 went to fund ongoing expenses of the debtor?

21 A. Correct.

22 Q. Administrative expenses maybe, we could  
23 call them?

24 A. I would call them operational expenses.

25 Q. But not payments to creditors, right?



1 A. No. No payments to creditors, no  
2 payments to advisors. It was literally just  
3 payroll, things that they needed done.

4 Q. And you said that incremental  
5 consideration was 250,000?

6 A. 75,000 up front and a 175,000 the day of  
7 close, as you can reference in the APA.

8 Q. And so after accounting for that, the  
9 top line consideration would have been  
10 \$5.95 million?

11 A. If you add the 250 to the 5.7.

12 Q. Do you know how much was actually paid  
13 by Heller at close?

14 A. There was a ten percent reduction to the  
15 purchase price.

16 Q. Okay. So less than 5.7 plus?

17 A. Correct.

18 Q. Okay. Do you have an understanding as  
19 to why that happened?

20 A. I do.

21 Q. Can you describe it?

22 A. There was a clause in the APA that  
23 basically said that in -- correct me if you have it  
24 in front of you and I don't -- that if five percent  
25 of the machines were not found in the warehouse or

1 ten percent were damaged, then they would have a  
2 ten percent reduction in purchase price.

3 Q. Do you think that Heller was entitled to  
4 reduce the purchase price?

5 A. I did not perform the analysis on the  
6 reduction in purchase price.

7 Q. Do you know who did, if anybody?

8 A. It was the Fox team, and I'm sure  
9 Province too.

10 Q. Do you know who at Province would know  
11 more about this?

12 A. My guess, Tanner, Tanner James.

13 Q. Shame that we did this today. I could  
14 have asked him about it.

15 Okay. So they were entitled -- your  
16 understanding or recollection is that Heller was  
17 entitled to reduce the purchase price if a certain  
18 percentage of machines were damaged, right?

19 A. Either damaged or not in the warehouse.

20 MR. KISSNER: Could we go to Tab 43.

21 And we'll mark that as 21.

22 (Exhibit 21 marked.)

23 MR. KISSNER: And this one -- this is  
24 the electronic, Danny, on the laptop.

25 ///

1 BY MR. KISSNER:

2 Q. So we have Tab 43, Exhibit 21. Do you  
3 recognize this document, Mr. Moses?

4 A. I have seen this e-mail.

5 Q. Could you describe it to me?

6 A. This is the initial -- or maybe the  
7 forwarded e-mail, that initially went from Heller to  
8 Fox Rothschild, that was forwarded out to the  
9 consultation parties, if I remember correctly, and I  
10 was cc'd on it, not directly sent to me.

11 Q. Okay. But you've seen it before?

12 A. I have seen this e-mail, yes.

13 Q. Can you turn to page 2 of the e-mail.

14 A. I am.

15 Q. And you do see the paragraph that starts  
16 with the word "given"? It's the third from the  
17 bottom.

18 A. I do.

19 Q. Could you just read those two sentences  
20 for me?

21 A. "Given that the number of DCMs in the  
22 warehouse varies by more than 5 percent of those  
23 identified on schedule 2.1(a), the ten percent  
24 reduction of purchase price is applicable. Further,  
25 even if we were to include the additional DCMs found

1 in this one warehouse, over ten percent of DCMs are  
2 not in working condition."

3 Q. So do you understand that to mean that  
4 Heller was alleging that more than ten percent of  
5 the purchased DCMs were not in working condition?

6 A. Heller is alleging that they have  
7 satisfied the clause that allows them to have a ten  
8 percent purchase price.

9 Q. Okay. And you said that Mr. James would  
10 have been the one who analyzed that at Province?

11 A. It was likely them and Fox, Fox  
12 Rothschild.

13 Q. Okay.

14 A. I do not -- I have not looked at  
15 schedule 2.1.

16 Q. Okay. Why don't we look at the  
17 attachment to Tab 43, which is the Excel up in front  
18 of you, which -- I don't know if we need to mark  
19 this separately.

20 MR. KISSNER: We can make it Exhibit 22,  
21 if you want.

22 So we'll make this Exhibit 22. And it  
23 was produced in native format and I think everybody  
24 on the Zoom should have a copy, but if not, feel  
25 free to reach out.

1 It's the attachment to 43.

2 (Exhibit 22 marked.)

3 BY MR. KISSNER:

4 Q. And let me know when you're ready,  
5 Mr. Moses.

6 A. I am ready.

7 Q. Do you recognize this document?

8 A. I have not looked at this spreadsheet  
9 before.

10 Q. Do you understand this to be the  
11 spreadsheet that was attached to the e-mail that we  
12 were just reviewing?

13 A. I did not look at the spreadsheet  
14 attached to the e-mail, so I do not have any  
15 knowledge of this spreadsheet.

16 Q. Do you have any reason to believe this  
17 wasn't the spreadsheet attached to the e-mail we  
18 were just look at?

19 A. I don't have no reason to believe or not  
20 believe.

21 Q. Would you rely on my representation that  
22 it is the spreadsheet attached to this e-mail, even  
23 if you don't have actual knowledge?

24 A. I will not -- I will reserve -- I would  
25 reserve all rights then.

1 Q. Is there somebody at Province that you  
2 think would probably know about this spreadsheet?

3 A. I don't know who actually prepared it.

4 Q. Okay.

5 A. There could be -- there were probably  
6 other people in Province who knows about this, but I  
7 don't know who was the actual preparer, personally.  
8 I just don't want to assume.

9 Q. That's fair.

10 Do you think Mr. James might know more  
11 about this spreadsheet? I'm sorry if I asked that  
12 before.

13 A. You've asked that before.

14 Q. Okay. But he might?

15 A. I am not going to opine, but my guess is  
16 there is another person in Province who helped Fox  
17 prepare this spreadsheet.

18 Q. Who helped Fox prepare this spreadsheet  
19 or --

20 A. I don't actually know where this  
21 spreadsheet came from. Like I said, I've never seen  
22 this before. I don't know if this came from  
23 Province. I don't know if it came from Heller. I  
24 don't know anything about this, so there's not -- I  
25 can't be of any service for you on this spreadsheet.

1 Q. On Exhibit 21, that e-mail, do you see  
2 that there's a list, like a numbered list? Do you  
3 see the sentence above it that started with "we  
4 have"?

5 A. Will you explain where you're looking?

6 MR. MANN: (Indicating.)

7 THE WITNESS: Okay.

8 BY MR. KISSNER:

9 Q. Does that refresh your recollection as  
10 to who created this spreadsheet?

11 A. My assumption is that we have attached,  
12 but I don't know where the original core base of  
13 this spreadsheet came from. But my assumption is --  
14 usually a "we" in a statement means it came from  
15 whoever sent the e-mail.

16 Q. And the person who sent it was from  
17 Heller or on behalf of Heller?

18 A. It was.

19 Q. Okay. Let's take a quick --

20 A. But in this particular case it was  
21 forwarded from Zach.

22 Q. Okay. Understood.

23 Let's take a quick break and go off the  
24 record. Let me just make sure we have everything we  
25 need and then we can go on the record and hopefully

1 all go home.

2 (A recess is taken.)

3 MR. KISSNER: Back on the record.

4 Thanks, Mr. Moses. I think that's all  
5 the questions that I have for you today. As we  
6 discussed off the record, there were a few topics  
7 that you do not have knowledge of, specifically  
8 pertaining to DCMs in Brazil and then the Heller  
9 spreadsheet that under -- that related to the  
10 purchase price adjustment. We're going to meet and  
11 confer with your counsel and come to a resolution on  
12 that.

13 And then I believe that debtor's counsel  
14 had something to state on the record.

15 MR. MANN: Just that preserve our right  
16 for errata, and when we get a copy of the transcript  
17 we can review it and make any corrections that are  
18 deemed necessary.

19

20 (The deposition concluded at 3:30 p.m.)

21 -oOo-

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## 1 CERTIFICATE OF DEPONENT

2 PAGE LINE CHANGE REASON

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14 \* \* \* \* \*

15 I, DANIEL MOSES, deponent herein, do hereby  
16 certify and declare the within and foregoing  
17 transcription to be my deposition in said action;  
18 that I have read, corrected and do hereby affix my  
19 signature to said deposition under penalty of  
20 perjury.

21 \_\_\_\_\_  
22 DANIEL MOSES, Deponent

23

24

25

## 1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA )  
 ) SS:  
3 COUNTY OF CLARK )

4

5 I, Karen L. Jones, a duly commissioned and  
6 licensed Court Reporter, Clark County, State of  
7 Nevada, do hereby certify: That I reported the  
taking of the deposition of the witness, DANIEL  
8 MOSES, commencing on Wednesday, August 23, 2023 at  
10:00 a.m.

8

9 That prior to being examined, the witness was,  
10 by me, duly sworn to testify to the truth. That I  
thereafter transcribed my said shorthand notes into  
11 typewriting and that the typewritten transcript of  
said deposition is a complete, true and accurate  
transcription of said shorthand notes.

12

13 I further certify that (1) I am not a relative  
or employee of an attorney or counsel of any of the  
14 parties, nor a relative or employee of an attorney  
or counsel involved in said action, nor a person  
15 financially interested in the action; nor do I have  
any other relationship with any of the parties or  
16 with counsel of any of the parties involved in the  
action that may reasonably cause my impartiality to  
17 be questioned; and (2) that transcript review  
pursuant to NRCP 30(e) was requested.

18

19

20 IN WITNESS HEREOF, I have hereunto set my  
hand, in my office, in the County of Clark, State of  
21 Nevada, this 4th day of September, 2023.

22

*Karen L. Jones*

23

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KAREN L. JONES, CCR NO. 6944

24

25

30(b)(6) for Cash Cloud, Inc. dba Coin Cloud

Daniel Moses

In re: Cash Cloud Inc.

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Daniel Moses

In re: Cash Cloud Inc.

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